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on behalf of the general public as private attorney general

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

DANIELLE ERVIN, on behalf of the general public as private attorney general, Plaintiff, v. WELCOME SACRAMENTO LLC, a California Limited Liability Company dba Courtyard by Marriott Sacramento Cal Expo and DBA Fairfield Inn Sacramento Cal-Expo; WELCOME GROUP MANAGEMENT, LLC, a California Limited Liability Company; and WELCOME GROUP, INC., a California Corporation and DOES 1-50, inclusive, Defendants	Case No. ASSIGNED FOR ALL PURPOSES TO: JUDGE: DEPT: **PAGA REPRESENTATIVE ACTION COMPLAINT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (Labor Code §§ 2698 *et seq).***

BY FAX

COMES NOW Plaintiff DANIELLE ERVIN ("Plaintiff"), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants WELCOME SACRAMENTO LLC,a California Limited Liability Company dba Courtyard by Marriott Sacramento Cal Expo and DBA Fairfield Inn Sacramento Cal-Expo; WELCOME GROUP MANAGEMENT, LLC, a California Limited Liability Company; and WELCOME GROUP, INC., a California Corporation and DOES 1-50, inclusive, (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698 *et seq*. PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer's violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendants': (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all wages earned and owed upon separation from Defendants' employ, (e) failure to pay wages timely during employment, (f) failure to provide accurate itemized wage statements, (g) failure to reimburse necessary business expenses, (h) improper use of consumer credit report in violation of labor code section § 1024.5, (i) failure to provide suitable seating, (j) failure to pay reporting time pay, and (k) issuing payment of wages in the form of a non-labor code-compliant instrument. As a result Plaintiff seeks penalties under Labor Code 2698*, et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original

jurisdiction in all cases except those given by statute to other trial courts." The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, Defendants either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

5. Venue as to each Defendants is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendants is doing business throughout California, including but not limited to Sacramento County, and each Defendants is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and all other aggrieved employees within the State of California. Defendants employs numerous aggrieved employees in in the State of California.

6. On information and belief, Defendants has conducted business within the State of California during the purported liability period and continue to conduct business throughout the State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the similarly situated aggrieved employees within California.

7. The California Superior Court also has jurisdiction in this matter because on information and belief there are no federal questions at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, the IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

8. On information and belief, during the statutory liability period and continuing to the present ("liability period"), Defendants consistently maintained and enforced against Defendants' aggrieved Employees, among others, the following unlawful practices and policies, in violation of California state wage and hour laws: (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all wages earned and owed upon separation from Defendants' employ, (e) failure to pay wages timely

during employment, (f) failure to provide accurate itemized wage statements, (g) failure to reimburse necessary business expenses, (h) improper use of consumer credit report in violation of labor code section § 1024.5, (i) failure to provide suitable seating, (j) failure to pay reporting time pay, and (k) issuing payment of wages in the form of a non-labor code-compliant instrument.

9. On information and belief, during the statutory liability period and continuing to the present, Defendants have had a consistent policy of failing to pay wages including overtime wages for hours worked while subject to the control of Defendants.

10. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to provide meal periods to Plaintiff and aggrieved employees. Defendants have also failed to provide meal premiums for missed meal periods.

11. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to provide rest periods to Plaintiff and aggrieved employees. Defendants have also failed to provide rest premiums for missed rest periods.

12. On information and belief, during the statutory liability period and continuing to the present, Defendants have had a consistent policy of failing to timely pay wages upon separation.

13. On information and belief, during the statutory liability period and continuing to the present, Defendants have had a consistent policy of failing to timely pay wages during Plaintiff and Aggrieved Employees' employment.

14. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

15. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to pay Plaintiff and aggrieved employees reporting time pay.

16. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to reimburse necessary business expenses to Plaintiff and aggrieved employees.

17. During the liability period, Defendants failed to provide suitable seating to Plaintiff and Aggrieved Employees while performing their job duties in violation of applicable California Wage Order 1-2001 and 1-2001 sec. (14) (A)-(B).

18. On information and belief, during the statutory liability period and continuing to the present, Defendants have issued Plaintiff and aggrieved employees payment of wages in the form of a non-labor code compliant instrument.

19. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-204, 212, 213, 226, 510, 558, 226.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, 1024.5 and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

20. Plaintiff, DANIELLE ERVIN, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in October 2021 as a Non-Exempt Employee with the title of Hotel Front Desk Agent and worked during the liability period for Defendants, at the Courtyard by Marriott Sacramento Cal Expo until Plaintiff's separation from Defendants' employ in approximately December 2021. Plaintiff's duties included checking in guests, answering phone, and providing customer service.

21. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

a) to perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order ("IWC");
b) not provided first and second meal periods nor paid premium wages;
c) not provided first, second and third rest periods nor paid premium wages;
d) not paid timely during their employment;

e) not provided accurate itemized wage statements;

f) not paid timely upon separation from Defendants' employ;

g) not provided suitable seating;

h) subjected to improper use of consumer credit reports;

i) not paid reporting time pay;

j) issued payment of wages in the form of a non-Labor Code compliant instrument; and

k) not reimbursed or necessary business expenses.

22. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages and overtime wages, to its Non-Exempt Employees and members of the Representative Group; nor have Defendants returned to Plaintiff or members of the Representative Group, upon or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698*, et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

B. Defendants

21. Defendant, WELCOME SACRAMENTO LLC, is a California Limited Liability Company Welcome Sacramento LLC is DBA Courtyard by Marriott. Specific division is Courtyard By Marriott Sacramento CAL Expo. Plaintiff estimates there are in excess of one hundred (100) Non-Exempt Employees who work or have worked for Defendants over the last year.

22. Defendant, WELCOME GROUP MANAGEMENT, LLC, is a California Limited Liability Company that operates as a hotel business. Defendant operates in six California locations, one of them being the Courtyard Sacramento CAL Expo that Plaintiff worked at. Defendant operates eleven locations nationwide. Plaintiff estimates there are in excess of one hundred (100) Non-Exempt Employees who work or have worked for Defendants over the last year.

23. Defendant, WELCOME GROUP, INC., is a California Corporation that operates as a hotel business. Defendant operates in six California locations, one of them being the Courtyard

Sacramento CAL Expo that Plaintiff worked at. Defendant operates eleven locations nationwide. Plaintiff estimates there are in excess of one hundred (100) Non-Exempt Employees who work or have worked for Defendants over the last year.

24. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants is legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

25. Plaintiff is informed and believes and thereon alleges that each Defendants, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable to the other Defendants.

IV. <u>GENERAL ALLEGATIONS</u>

26. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

27. Plaintiff is informed and believes Aggrieved employees have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

28. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties related to Defendants’ security business.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants are and was advised by skilled lawyers and other professionals, employees, and advisors with knowledge of

the requirements of California's wage and employment laws.

30. On information and belief, during the relevant time frame, Plaintiff and Aggrieved employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work week.

31. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved employees based upon an hourly rate.

32. On information and belief, during the relevant time frame, Plaintiff and Aggrieved employees typically worked five (5) days a week.

33. Plaintiff is informed and believes that the Aggrieved employees were required to keep similar schedules.

34. In addition, the Aggrieved employees frequently worked in excess of eight (8) hours a day and/or over forty (40) hours in a workweek, but were not properly paid for minimum and overtime wages.

35. Defendants also failed to properly calculate Plaintiff's and Aggrieved employees' regular rate of pay including but not limited to by failing to include all forms of compensation/remuneration in the regular rate including but not limited to bonuses, incentives, commissions, shift differentials, and other compensation for overtime calculation purposes.

36. Plaintiff and Aggrieved employees were required to perform post-shift work activities, off the clock, without any compensation. After clocking out, Plaintiff and Aggrieved employees were required to finish reports and assist guests. This off the clock work was required by management.

37. Plaintiff worked at two hotels owned by Defendants, the Courtyard by Marriott and the Fairfield Inn. Plaintiff's hours worked were subject to time shaving. Plaintiff filled out a paper timesheet with start/stop and meal periods rounded unfairly.

38. Plaintiff and Aggrieved employees were offered discounts on hotel rooms. Plaintiff used these discounts, these discounts were never listed on her paystubs nor did they show extra pay benefit, which would trigger regular rate issues.

39. Plaintiff's clock in periods that were recorded before she began working were not compensated.

40. During the relevant time, as a consequence of Defendants' staffing and scheduling practices, work demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and Aggrieved employees timely, legally complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.

41. Plaintiff and Aggrieved employees were required to keep walkie-talkies on, even during lunch periods. These work phones frequently interrupted any meal periods that were taken.

42. Plaintiff and Aggrieved employees were required to keep walkie-talkies on, even during rest periods. These work phones frequently interrupted any rest periods that were taken.

43. Plaintiff and Aggrieved employees were not allowed to leave the premises during rest breaks or meal breaks.

44. Similarly, as a consequence of Defendants' staffing and scheduling practices, work demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and Aggrieved employees legally compliant second meal periods on shifts over ten hours as required by law. Plaintiff and Aggrieved employees worked more than ten hours a day on a consistent and regular basis during the relevant time period without any second meal periods.

45. On information and belief, Plaintiff and Aggrieved employees did not waive their rights to any meal periods under the law.

46. Plaintiff and Aggrieved employees were not provided with valid lawful on-duty meal periods.

47. Despite the above-mentioned meal period violations, Defendants failed to compensate Plaintiff, and on information and belief, failed to compensate Aggrieved employees, one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

48. Plaintiff are informed and believe, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and Aggrieved employees were

entitled to receive premium wages based on their regular rate of pay under California Labor Code § 226.7 but were not receiving such compensation.

49. Plaintiff was never allowed to take a second meal period on the days that she worked over ten hours.

50. Plaintiff was never allowed to take a third rest break on the days that she worked over ten hours.

51. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were systematically not authorized and permitted to take one net ten-minute paid, rest period for every four hours worked or major fraction thereof, which is a violation of the California Labor Code and IWC wage order.

52. Defendants maintained and enforced scheduling practices, policies, and imposed work demands that frequently required Plaintiff and Aggrieved employees to forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to provide relief for Plaintiff and Aggrieved employees to take their lawfully required breaks.

53. Despite the above-mentioned rest period violations, Defendants did not compensate Plaintiff, and on information and belief, did not pay Aggrieved employees one additional hour of pay at their regular rate as required by California law, including California Labor Code § 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized and permitted.

54. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew that at the time of termination of employment (or within 72 hours thereof for resignations without prior notice as the case may be) they had a duty to accurately compensate Plaintiff and Aggrieved employees for all wages owed including minimum wages, meal and rest period premiums, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

55. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all wages owed to them during their employment. Plaintiff and the other aggrieved employees did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

56. During the relevant time period, Defendants failed to pay Plaintiff and the other aggrieved employees all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204.

57. Defendants failed to reimburse Plaintiff and Aggrieved employees for business expenses incurred pursuant to California Labor Code § 2802. Plaintiff and Aggrieved employees were not reimbursed for costs associated with personal cell phone use. Defendants required Plaintiff and Aggrieved employees to use personal cellphones for work related purposes. Plaintiff incurred other expenses that Defendants failed to compensate as well. Such costs were associated with cleaning products necessary to clean her workspace and keep her safe from contracting COVID-19 from hotel guests that frequented the front desk.

58. Defendants failed to pay Reporting Time Pay as required by law. For instance, Plaintiff and Aggrieved employees would be sent home within the first two hours of the shift on a weekly basis. Defendants failed to pay Plaintiff and Aggrieved employees for half of their scheduled shifts as required by law. Reporting time pay was never listed on any paystubs.

59. On information and belief, Defendants violated Labor Code sections 212 and 213 by issuing payment to Plaintiff and Aggrieved employees for their wages in a non-Labor Code-compliant instrument, i.e. gift cards. The gift cards were given by Defendants to Plaintiff and Aggrieved employees once a year during the Christmas holidays. These gift cards were not reflected on paystubs, potentially triggering regular rate issues for overtime, rest premiums, meal premiums and sick pay.

60. Upon information and belief, Defendants knew and or should have known that it is improper to implement policies and commit unlawful acts such as:

(a) requiring employees to work four (4) hours or a major fraction thereof without being provided a minimum ten (10) minute rest period and without compensating the employees with one (1) hour of pay at the employees' regular rate of compensation for each workday that a rest period was not provided;

(b) requiring employees to work in excess of five (5) hours or ten (10) hours per day without being provided an uninterrupted thirty minute meal period and/or a second meal period, and without compensating employees with one (1) hour of pay at the regular rate of compensation for each workday that such a meal period was not provided;

(c) failing to pay overtime and minimum wages;

(d) failing to reimburse necessary business expenses;

(e) failing to pay timely wages upon during employment;

(f) failing to pay timely wages upon separation from employment;

(g) failing to maintain accurately itemized wage statements;

(h) failing to pay reporting time pay;

(i) issuing wages through non-Labor Code compliant instruments;

(j) for improper use of consumer credit reports; and

(k) conducting and engaging in unfair business practices.

61. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and Aggrieved employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

62. Plaintiff and Aggrieved employees they seek to represent are covered by, and Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq*.

63. Plaintiff applied to work for Defendants in California. In connection with her employment and/or application, Plaintiff was required to fill out Defendants' Pre-Employment

Screening permitting Defendants to obtain a consumer report on Plaintiff.

64. Prior to beginning their employment with Defendants, Plaintiff was required to complete paperwork titled "Background Screening Disclosure and Release Form" and "Authorization" in order to proceed with accepting their offer of employment.

65. Upon information and belief, Defendants required all members of the FCRA Class to complete the same or a substantially similar standard forms through "Accurate Background."

66. Defendants violated the Fair Credit Reporting Act 15 U.S.C. § 1681, et seq. ("FCRA"), the Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785 et seq., and the California Investigative Consumer Reporting Agencies Act ("ICRAA") (Cal. Civ. Code § 1786 et seq.).

67. Plaintiff asserts these claims arising on a class-wide basis.

68. Plaintiff and the members of the FCRA Class are all prospective employees and/or current employees employed by, or formerly employed by Defendants in California who, as a condition of employment, were required to submit to a background check using Defendants' "Accurate Background," or substantially similar Disclosure forms, at any time during the period beginning five years prior to the filing of this Complaint to the present. ("FCRA Class").

69. The FCRA provides individuals with a number of rights. Specifically, pertaining to employment-related background checks, the FCRA provides that a prospective employee must give valid consent to the background check. The FCRA requires a signed authorization and disclosure from the applicant, sometimes referred to as a "consent" form. The authorization and disclosure forms must be executed and signed by the applicant prior to an employer requesting or conducting a background check. Importantly, no extraneous information can be attached or included on the consent form. The authorization and disclosure must stand alone.

70. In violation of 15 U.S.C. §1681b(b)(2), Defendants failed to provide proper disclosures to employees and applicants prior to causing such background checks and consumer reports to be procured and failed to secure requisite authorizations prior to conducting such background checks.

71. A prospective employer violates FCRA's standalone document requirement by including extraneous information relating to various state disclosure requirements in that disclosure. *Gilberg v. Cal. Check Cashing Stores, Ltd. Liab. Co*., 913 F.3d 1169, 1171 (9th Cir.2019).

72. In addition, references to documents or information not part of an FCRA-mandated disclosure, such as notice of an “investigative consumer report”, or a “summary of your rights under the Fair Credit Reporting Act” constitutes extraneous information barred by the FCRA’s standalone document requirement. Gilberg, at 1176-77.

73. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) Defendants has obtained consumer reports without proper authorization and consent as required by the FCRA. This triggers statutory damages under the FCRA in the amount of up to $1,000 for each applicant that Defendants obtained a consumer report without a facially valid authorization, as well as punitive damages, equitable relief, and attorneys' fees and costs.

74. Defendants unlawfully conducted credit and background checks of job applicants including Plaintiff and the Aggrieved employees without providing lawful disclosures and obtaining valid authorizations in violation of the law. By way of example only, during the relevant time period, as part of a single document, Defendants required Plaintiff and Aggrieved employees to sign forms for Defendants to perform a background check and obtain consumer credit reports. This form, which contained all of the aforementioned disclosures in a single document, is embedded with extraneous information pertaining to several state law requirements, fails to provide all the requisite information and contains a liability waiver.

75. As set forth herein, these documents violate the mandates of the FCRA, ICRAA, and CCRAA.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.*

76. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

77. PAGA is a mechanism by which the State of California can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was…in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations..." Stats. 2003, Ch. 906, section 1.

78. Plaintiff brings this Representative Action on behalf of the State of California with respect to himself and all other individuals who are or previously were employed by Defendants as non-exempt California employees during the applicable statutory period (the "aggrieved employees").

79. On December 28, 2022 Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

80. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California non-exempt Employees of Defendants.

81. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for which Defendants is liable due to numerous Labor Code violations as set forth in this Complaint, including without limitation Labor Code section 201-204, 212-213, 226, 226.3, 510, 558, 1174,

1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and, 2698 *et seq.,* applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq*.

82. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay overtime wages owed. Therefore, Defendants violated section 510, and 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime compensation twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week

83. Plaintiff and all other aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to compensation minimum and overtime wages, but to date have not received such compensation, therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-204.

84. On information and belief, Defendants willfully failed to pay all wages due and owing during employment. These wages include minimum and overtime wages.

85. On information and belief, Defendants failed to provide accurate itemized wage statements which failed to include all hours worked, including overtime, due and owing to Plaintiff and the aggrieved employees pursuant to Labor Code section 226(a). Defendants further failed to include or itemize the gift card payments made to Plaintiff and Aggrieved Employees.

86. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($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 subdivision (a) of Section 226.

87. Additionally, Defendants have no accurate records relating to aggrieved employees' work periods, total daily hours worked, total hours worked per payroll period and

applicable pay rates, in violation of applicable Wage Orders. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

88. On information and belief, Defendants failed to reimburse Plaintiff and aggrieved Employees for business expenses incurred as described above. Labor Code § 2802 requires Defendants to indemnify Plaintiff and aggrieved Employees for necessary expenditures incurred in direct consequences of the discharge of his duties. Despite these realities of the job, Defendants failed to provide reimbursements.

89. Wage Order 1-2001 states "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Plaintiff alleges that Defendants failed to provide employees suitable seats while working even though the nature of the work reasonably permitted the use of such seats.

90. Defendants' failure to provide suitable seats constitutes a violation of applicable California laws and regulations, including Labor Code section 1198 and IWC Wage Order 1-2001.

91. Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and the other current and former aggrieved employees with suitable seats in violation of Wage Order 1-2001, Defendants also violated Labor Code section 1198.

92. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his or her personal representative of any right or remedy to which he is entitled under the laws of this State.

93. On information and belief, Defendant violated Labor Code sections 212 and 213 by issuing payment to Plaintiffs and Aggrieved Employees for their wages in a non-Labor Code-compliant instrument. For instance, Defendant on occasion would issue gifts cards to Plaintiffs.

94. California Labor Code § 212 requires California employers to comply with a series of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid

an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or understanding, to pay the money called for by the instrument. *See People v. Turner,* 154 Cal. App. 2d F. Supp. 883, 885-86 (1957).

95. Labor Code § 213 prohibits an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.

96. Defendants failed to pay reporting time pay as outlined above.

97. As a result of Defendants' unlawful conduct, Plaintiff and aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

98. Plaintiff and all other aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to compensation minimum and overtime wages, sick pay, but to date have not received such compensation, therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-204.

99. Labor Code section 1024.5 states in pertinent part: "(a) An employer or prospective employer shall not use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following: (1) A managerial position; (2) A position in the state Department of Justice; (3) That of a sworn peace officer or other law

enforcement position; (4) A position for which the information contained in the report is required by law to be disclosed or obtained; (5) A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person; (A) Bank or credit card account information; (B) Social security number; (C) Date of birth; (6) A position in which the person is, or would be, any of the following; (A) A named signatory on the bank or credit card account of the employer; (B) Authorized to transfer money on behalf of the employer; (C) Authorized to enter into financial contracts on behalf of the employer; (7) A position that involves access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and (ii) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information; (8) A position that involves regular access to cash totaling ten thousand dollars ($10,000) or more of the employer, a customer, or client, during the workday." None of these factors apply to Plaintiff.

100. Plaintiff and the Representative aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs sunder Labor Code section 2698, et. seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: March 6, 2023

JAMES HAWKINS APLC

By: ______________________________

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

Attorneys for Plaintiff DANIELLE ERVIN on behalf of the general public as private attorney general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

December 28, 2022

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
http://www.dir.ca.gov/Private-Attorneys-General-Act

Via Certified Mail

WELCOME SACRAMENTO LLC,
a California Limited Liability Company
dba Courtyard by Marriott Sacramento Cal Expo
Agent for Service of Process:
AMARJIT SHOKEEN
5901 W CENTURY BLVD #1210
LOS ANGELES, CA 90045
Receipt No.: 7021 1970 0000 9061 3363

WELCOME GROUP MANAGEMENT, LLC,
a California Limited Liability Company
Agent for Service of Process:
AMARJIT SHOKEEN
222 N PACIFIC COAST HWY SUITE 2250
EL SEGUNDO, CA 90245
Receipt No.: 7021 1970 0000 9061 3370

WELCOME GROUP, INC.,
a California Corporation
Agent for Service of Process:
AMARJIT SHOKEEN
222 N PACIFIC COAST HWY SUITE 2250
EL SEGUNDO, CA 90245
Receipt No.: 7021 1970 0000 9061 3387

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff DANIELLE ERVIN, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, WELCOME SACRAMENTO LLC, a California Limited Liability Company dba Courtyard by Marriott Sacramento Cal Expo, WELCOME GROUP MANAGEMENT, LLC, a California Limited Liability Company, and WELCOME GROUP, INC., a California Corporation through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Sacramento County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint