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Attorneys for Plaintiff,
MAURICIO VIDES on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MAURICIO VIDES, an individual, on behalf
of himself, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiff,

vs.

OCEAN AVENUE, LLC DBA FAIRMONT
MIRAMAR HOTEL, a California Corporation
and DOES 1-50, inclusive,

Defendant.

Case No.: **23STCV09148**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff MAURICIO VIDES brings this PAGA representative action complaint on behalf
2 of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
3 and alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff MAURICIO VIDES worked as an employee for Defendant OCEAN AVENUE,
6 LLC DBA FAIRMONT MIRAMAR HOTEL and Does 1-50 (collectively “Defendant”).
7 Defendant owns and operates hotels and motels. Plaintiff MAURICIO VIDES is a current
8 employee of Defendant. Plaintiff brings this action pursuant to the Private Attorneys General Act
9 of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and
10 former employees of Defendant within one year of serving notice on the LWDA to the present are
11 aggrieved employees.

12 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
13 willful and intentional employment practices and policies. Plaintiff brings this representative
14 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
15 California, based upon the claims articulated below. Plaintiff provided notice of his claims
16 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
17 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
18 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
19 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
20 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

21 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
22 worked, including overtime hours worked; (2) failing to pay minimum wage ; (3) failing to provide
23 timely meal breaks; (4) failing to provide rest breaks; (5) failing to pay wages due upon
24 termination; (6) failing to provide place of employment that is safe and healthful; (7) failing to
25 reimburse for required business expenses; (8) failing to provide accurate itemized wage statements.
26 Defendant is therefore liable for civil penalties under the Cal. Labor Code, including the Private
27 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.
28

1 **THE PARTIES**

2 4. Plaintiff MAURICIO VIDES is a resident of the State of California and works for
3 Defendant.

4 5. Defendant OCEAN AVENUE, LLC DBA FAIRMONT MIRAMAR HOTEL is a
5 California corporation authorized to do business and doing business in California with the capacity
6 to sue and to be sued, and doing business, in the county of Los Angeles, State of California.

7 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
9 informed and believes and thereon alleges that said Defendant is legally responsible for the
10 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
11 will amend this complaint when their true names and capabilities are ascertained.

12 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
13 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
14 of the representative class, and exercised control over their wages, hours, and working conditions.
15 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
16 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
17 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
18 to the other Defendants.

19 **JURISDICTION AND VENUE**

20 8. Venue is proper in this judicial district because Defendant conducts business in this
21 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
22 in this case that arose in this county.

23 9. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
24 the Superior Court and will be established according to proof at trial. Based on information,
25 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
26 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
27 (\$25,000).
28

1 10. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendant is qualified to do business in California and regularly conduct
3 business in California. Further, there is no federal question at issue as the claims herein are based
4 solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 11. During the relevant time-period, Defendant committed various violations of the
7 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 12. This representative action represents over one hundred current and former aggrieved
10 employees.

11 13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 14. Plaintiff and all current and former employees within one year of filing this action to
15 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
16 code §2699(c).)

17 15. Defendant, and each of them, have committed the following violations of the California
18 Labor Code:

19 **Failure to Comply with California Law Concerning Payment of Lawful Wage For All**
20 **Hours Worked, Including Overtime Hours Worked**

21 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

22 16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 17. The pertinent Wage Order defines “hours worked” as “the time during which an
25 employee is subject to the control of an employer, and includes all the time the employee is
26 suffered or permitted to work, whether or not required to do so.” When employees like Plaintiff
27 and his coworkers earning at or near minimum wage do not receive payment for all hours worked
28 as a result of unlawful employment practices, the result is that they are earning less than the

1 statutory minimum wages for all hours worked. Defendant has been engaged in many unlawful
2 employment practices which resulted in underpayment for hours worked each pay period,
3 including overtime hours worked, as more fully set forth below. Defendant has also failed to pay
4 the required minimum wage for all hours worked and has failed to pay all wages owed twice per
5 month.

6 18. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked
7 off the clock and were routinely subjected to periods wherein they were under the Defendant's
8 control but not compensated for their time. Plaintiff and aggrieved employees were required to
9 perform several required duties off the clock. Defendant has violated Labor Code §§510 1194,
10 1198, 1199 and the Wage Order. Defendant is liable for civil penalties pursuant to Labor Code
11 §§558 and 2698 *et seq.*

12 19. Work Performed During Unpaid Meal Periods. As more fully set forth below,
13 Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of "not less
14 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and
15 512. Due to the press of work and inadequately staffed workforce, employee meal periods were
16 frequently interrupted with work. Plaintiff and aggrieved employees have been employed under
17 conditions prohibited by the wage order, and thus Defendant has also violated §§1198 and 1199.
18 Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

19 20. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
20 Claimant and aggrieved employees all wages earned twice during each calendar month pursuant
21 to Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
22 unlawful employment policies and practices discussed herein. As a result of these practices,
23 Plaintiff and aggrieved employees were underpaid for hours worked, including penalty wages, and
24 this underpayment resulted in a failure to pay all wages owed twice per month.

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(Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199 and 2698 *et seq.*)

21. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

22. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

23. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendant's practices described above. Based on Defendant's unlawful conduct described above, and because Plaintiff and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Timely Meal Breaks

(Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order.)

24. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

25. Labor Code §512 provides, “[a]n 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...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an 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.”

26. In this case, Plaintiff and his coworkers frequently missed meal periods, or meal periods were short or interrupted, because Defendant perpetually short-staffed its shifts.

1 27. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
2 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
3 (2) did not adequately inform and train employees about their rights to meal periods and premium
4 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
5 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
6 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
7 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
8 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy

9 28. The Wage Orders require employers to authorize and permit employees to take an
10 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
11 §1198, “the employment of any employee... under conditions of labor prohibited by the order is
12 unlawful.” Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
13 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
14 §§226.7 and 512. Defendant never paid penalty pay to Plaintiff or aggrieved employees for
15 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
16 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
17 Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to
18 Cal. Labor Code §558 and §2698 *et. seq.*

19 **Failure to Provide Rest Breaks**

20 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 *et seq.*, 3457, 6712)

21 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 30. Defendant has failed to maintain a policy and practice that provides or permits its
24 employees to take off-duty rest periods as required by California law. Plaintiff and aggrieved
25 employees are entitled to at least a ten-minute rest period in which they are relieved of all duties,
26 as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Plaintiff explains that he and his
27 coworkers frequently missed rest periods. On many occasions, no breaks were provided, again
28 because of the press of work.

1 31. Defendant failed to pay Plaintiff and similarly situated employees all premium
2 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
3 periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim,
4 Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
5 penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these
6 violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et*.
7 *seq.*

8 32. Uninterrupted rest periods were not consistently provided or not scheduled before and
9 after a meal period for shifts greater than six hours, as prescribed by California law because
10 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
11 (2) did not adequately inform and train employees about their rights to rest breaks and premium
12 payments for non-compliant rest breaks; (3) did not adequately inform and train employees about
13 when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because
14 Defendant did not staff enough people to schedule all timely and uninterrupted ten-minute rest
15 breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt
16 employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

17 33. Defendant failed to pay Plaintiff and similarly situated employees the premium
18 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
19 periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period
20 violations occurred daily, however no rest period penalty pay is listed on any paystubs. Pursuant
21 to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited
22 by the order is unlawful." Accordingly, because Defendant violated Wage Order provisions
23 requiring rest breaks, Defendant violated §1198. As a result of these violations, Defendant is liable
24 for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim,
25 Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
26 penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under
27 Cal. Labor Code §§ 558 and 2698 *et. seq.*
28

1 **Failure to Pay Wages Due Upon Termination**

2 (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*)

3 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 35. An employee who is discharged must be paid all of his or her wages, including accrued
6 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
7 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
8 Plaintiff at the time employment terminated. Defendant willfully failed to pay employees who are
9 no longer employed by it all compensation due upon termination of employment as required by
10 Cal. Lab. Code §§201 and 202.

11 36. Additionally, Defendant was required to pay Plaintiff and aggrieved employees all
12 wages earned twice during each calendar month pursuant to Labor Code §204(a). Defendant failed
13 to pay all wages earned to employees as a result of the unlawful employment policies and practices
14 discussed herein. As a result of these practices, Plaintiff and aggrieved employees were underpaid
15 for hours worked, including overtime and penalty wages, and this underpayment resulted in a
16 failure to pay all wages owed twice per month. Due to this failure, Defendant is liable under Labor
17 Code §210 for failure to pay wages as required by law.

18 37. Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30)
19 days pay as waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties
20 pursuant to Cal. Lab. Code § 2698 *et. seq.*

21 **Failure to Provide Place Of Employment That Is Safe And Healthful**

22 (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

23 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 39. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment
26 and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code
27 §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall
28 adopt and use practices, means, methods, operations, and processes which are reasonably adequate

1 to render such employment and place of employment safe and healthful. Every employer. Pursuant
2 to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any
3 employment or place of employment which is not safe and healthful. Cal. Labor Code §6403
4 states that no employer shall fail or neglect to provide and use safety devices and safeguards
5 reasonably adequate to render the employment and place of employment safe, or to adopt and use
6 methods and processes reasonably adequate to render the employment and place of employment
7 safe, or to do every other thing reasonably necessary to protect the life, safety, and health of
8 employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place
9 of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every
10 employer and every employee shall comply with occupational safety and health standards,
11 with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders
12 pursuant to this division which are applicable to his own actions and conduct.

13 40. Defendant failed to timely make changes to the workplace at the onset of COVID.
14 Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2
15 (SARS-CoV-2). The Plaintiff and aggrieved employees continued to work without distancing
16 throughout the pandemic. Plaintiff and aggrieved employees continued to work in enclosed and
17 improperly socially distanced work environments without any distancing from others throughout
18 the pandemic. There was no effective written covid prevention program enforced and employees
19 were not consistently provided with even the most basic PPE, such as face masks. Defendant
20 employed their employees under unsafe conditions violative of Cal-OSHA regulations and the
21 Health and Safety Code.

22 41. As a result of these practices, Defendant has violated Cal. Labor Code §§6400, 6401,
23 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their
24 employees, as outlined above. Defendant is liable for civil penalties pursuant to Cal. Labor Code
25 §2699 *et seq.*
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1 **Failure to Reimburse for Required Business Expenses**

2 (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

3 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 43. Labor Code §2802 requires employers to indemnify employees for necessary
6 expenditures or losses incurred by employees in direct consequence of the discharge of duties.

7 44. Plaintiff and aggrieved employees are required to use their personal cell phones for
8 work related communications, although Defendant did not reimburse them in any way for the
9 expense of their personal cell phone use as required by the Labor Code. Plaintiff and his coworkers
10 were also required to purchase specific apparel to wear on the job which was also unreimbursed.
11 Accordingly, Defendant is liable for civil penalties under PAGA §2699 *et seq.*

12 **Failure to Provide Accurate Itemized Wage Statements**

13 (Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

14 45. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 46. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
17 wage statements to Plaintiff and the aggrieved employees, as well as maintain accurate records, in
18 accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiff and aggrieved
19 employees have not accurately reflected actual gross wages earned, the correct overtime hourly
20 rate, and total hours worked. They have also failed to list the correct penalty payments and expense
21 reimbursements. Such failures caused injury to Plaintiff and others, by, among other things,
22 impeding them from knowing the total hours worked and the amount of wages to which they are
23 and were entitled. Defendant knowingly and intentionally failed to itemize the correct gross wages
24 earned, net wages earned, and total hours worked. Defendant issued and maintained inaccurate
25 wage statements and records. Defendant is liable for civil penalties pursuant to Labor Code § 2699
26 *et seq.*
27
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1 **FIRST CAUSE OF ACTION**

2 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

3 **(California Labor Code §2698 *et seq.*)**

4 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 48. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
7 during the applicable statutory period and suffered one or more of the Labor Code violations set
8 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
9 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
10 attorneys’ fees and costs.

11 49. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

14 50. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
17 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 18 b. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194,
19 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- 20 c. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512,
21 558, 1198, 2698 *et seq.*, Wage Order)
- 22 d. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
23 2350, 2441, 2698 *et seq.*, 3457, 6712);
- 24 e. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256
25 and 2698 *et seq.*);
- 26 f. Failure to Provide Place Of Employment That Is Safe And Healthful (Cal. Labor
27 Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)
- 28

1 g. Failure to Reimburse Required Business Expenses (Cal. Labor Code §§1198, 2802,
2 2699 *et seq.*);

3 h. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §§ 226,
4 1174, 2699 *et seq.*).

5 51. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
6 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
7 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
8 employee for each subsequent violation of Labor Code §226(a).

9 52. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
10 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
11 for each underpaid employee for each pay period for which the employee was underpaid, and one
12 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
13 for which the employee was underpaid.

14 53. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
15 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
16 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
17 a civil penalty is not specifically provided.

18 54. Plaintiff and the other current and former employees of Defendant are aggrieved
19 employees. They were or are employed by Defendant, and each of them, and the violations alleged
20 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
21 current and former aggrieved employees.

22 55. At the time of each violation, Defendant employed one or more employees.

23 56. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
24 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
25 determined at trial, pre-judgment interest, costs and attorneys' fees.

26 57. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
27 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
28 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,

1 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
2 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
3 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
4 §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved
5 employees and the State of California.

6 **PRAYER FOR RELIEF**

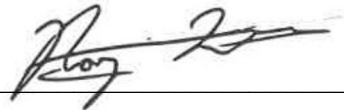
7 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
8 judgement against Defendant as follows:

- 9 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
10 determined at trial, but at least the jurisdictional amount of this Court;
- 11 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
12 and/or other applicable law;
- 13 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
14 law;
- 15 4. Pre-judgement and post-judgement interest as provided by law; and
- 16 5. Such other and further relief that the Court may deem just and proper.
- 17

18 DATED: April 25, 2023

KOUL LAW FIRM

LAW OFFICES OF SAHAG MAJARIAN II

21 
22 _____

23 BY: Nazo Koulloukian, Esq.

24 Attorneys for Plaintiff MAURICIO VIDES, and all
25 aggrieved employees
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27
28

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

February 23, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Ocean Avenue, LLC DBA
Fairmont Miramar Hotel
101 Wilshire Blvd.
Santa Monica, CA 90401

Re: **AMENDED** PAGA Notice Pursuant to California Labor Code §2699

Claimants: Mauricio Vides

Employer: Ocean Avenue, LLC DBA Fairmont Miramar Hotel

Dear Sir or Madam:

Mauricio Vides (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employer, Ocean Avenue, LLC DBA Fairmont Miramar Hotel (hereafter “Employer”).

Claimant submits this Amended PAGA Letter to include claims concerning Employer’s failure to promptly pay wages upon termination.

Claimant is a currently employee of Employer. Due to unlawful conditions of employment, Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

The pertinent Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employer has violated Labor Code §§510 1194, 1198, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Due to the press of work and inadequately staffed workforce, employee meal periods were frequently interrupted with work. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order)

Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11 of the Wage Order provides, in pertinent part, "[u]nless an 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."

In this case, Claimant and his coworkers frequently missed meal periods, or meal periods were short or interrupted, because Employer perpetually short-staffed its shifts.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code

§§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 et seq., 3457, 6712)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Claimant explains that he and his coworkers frequently missed rest periods. On many occasions, no breaks were provided, again because of the press of work.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Uninterrupted rest periods were not consistently provided or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on any paystubs. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.

Additionally, Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules,

regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees continued to work without distancing throughout the pandemic. Claimant and aggrieved employees continued to work in enclosed and improperly socially distanced work environments without any distancing from others throughout the pandemic. There was no effective written covid prevention program enforced and employees were not consistently provided with even the most basic PPE, such as face masks. Employers employed their employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Claimant and his coworkers were also required to purchase specific apparel to wear on the job which was also unreimbursed. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. They have also failed to list the correct penalty payments and expense reimbursements. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employers knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked. Employers

issued and maintained inaccurate wage statements and records. Employers are liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimant