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8 Yolanda Membreno de Ayala

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County of Santa Cruz
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CRUZ

13 JUANA MATIAS, CARMEN CHAVEZ
FERNANDEZ, and YOLANDA
14 MEMBRENO DE AYALA, individually,
and on behalf of other members of the
15 general public similarly situated, and as
aggrieved employees pursuant to the Private
16 Attorneys General Act ("PAGA"),

17 Plaintiffs,

18 vs.

19 HOSPITALITY STAFFING SOLUTIONS,
LLC, a Delaware limited liability company;
20 KELLERMEYER BERGENSONS
SERVICES, LLC, a Delaware limited
21 liability company; and DOES 1 through 10,
22 inclusive,

23 Defendants.

Case No.: 23CV00490

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201, 201.3, and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code §§ 201.3 and 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Juana Matias, Carmen Chavez Fernandez, and Yolanda Membreno de Ayala,
2 individually and on behalf of all other members of the public similarly situated, and as aggrieved
3 employees and on behalf of all aggrieved employees, allege as follows.

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of damages,
17 penalties, and other relief sought in this action do not exceed \$75,000.

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

23 3. Venue is proper in this Court, because Defendants employ persons in this county,
24 and employed Plaintiffs in this county, and thus a substantial portion of the transactions and
25 occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Juana Matias (“Plaintiff Matias”) is a resident of Watsonville, in Santa
28 Cruz County, California. Defendants employed Plaintiff Matias as an hourly paid, non-exempt

1 employee from approximately January 2019 to August 2022. Plaintiff Matias worked as a
2 Housekeeper for Defendants at their jobsite located in Aptos, California. During her
3 employment, Plaintiff Matias typically worked eight (8) hours per day or more, and five (5)
4 days per week or more. At the time Plaintiff Matias's employment with Defendants ended, she
5 was compensated approximately \$20.00 per hour. Plaintiff Matias's primary job duties
6 included, without limitation, making beds, replacing towels and toiletries, vacuuming, and
7 disinfecting kitchens and bathrooms.

8 5. Plaintiff Carmen Chavez Fernandez ("Plaintiff Chavez Fernandez") is a resident
9 of Gustine, in Merced County, California. Defendants employed Plaintiff Chavez Fernandez as
10 an hourly paid, non-exempt employee from approximately December 2018 to August 2022.
11 Plaintiff Chavez Fernandez worked as a Housekeeper for Defendants at their jobsite located in
12 Aptos, California. During her employment, Plaintiff Chavez Fernandez typically worked eight
13 (8) hours per day or more, and five (5) days per week or more. At the time Plaintiff Chavez
14 Fernandez's employment with Defendants ended, she was compensated approximately \$20.00
15 per hour. Plaintiff Chavez Fernandez's primary job duties included, without limitation, making
16 beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

17 6. Plaintiff Yolanda Membreno de Ayala ("Plaintiff Membreno de Ayala") is a
18 resident of Watsonville, in Santa Cruz County, California. Defendants employed Plaintiff
19 Membreno de Ayala as an hourly paid, non-exempt employee from approximately June 2019 to
20 August 2022. Plaintiff Membreno de Ayala worked as a Housekeeper for Defendants at their
21 jobsite located in Aptos, California. During her employment, Plaintiff Membreno de Ayala
22 typically worked six (6) hours per day or more, and five (5) days per week or more. At the time
23 Plaintiff Membreno de Ayala's employment with Defendants ended, she was compensated
24 approximately \$20.00 per hour. Plaintiff Membreno de Ayala's primary job duties included,
25 without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting
26 kitchens and bathrooms.

27 7. HOSPITALITY STAFFING SOLUTIONS, LLC was and is, upon information
28 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an

1 employer whose employees are engaged throughout this county, the State of California.

2 8. KELLERMEYER BERGENSONS SERVICES, LLC was and is, upon
3 information and belief, a Delaware limited liability company, and at all times hereinafter
4 mentioned, an employer whose employees are engaged throughout this county, the State of
5 California.

6 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
7 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
8 the complaint and serve such fictitiously named Defendants once their names and capacities
9 become known.

10 10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
11 were the partners, agents, owners, or managers of HOSPITALITY STAFFING SOLUTIONS,
12 LLC and KELLERMEYER BERGENSONS SERVICES, LLC, at all relevant times.

13 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the
14 acts and omissions alleged herein was performed by, or is attributable to, HOSPITALITY
15 STAFFING SOLUTIONS, LLC; KELLERMEYER BERGENSONS SERVICES, LLC; and/or
16 DOES 1 through 10 (collectively, “Defendants” or “HSS”), each acting as the agent, employee,
17 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
18 and was acting within the course and scope of such agency, employment, joint venture, or
19 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
20 Defendants were in accordance with, and represent, the official policy of Defendants.

21 12. At all relevant times, Defendants, and each of them, ratified each and every act
22 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
23 and abetted the acts and omissions of each and all the other Defendants in proximately causing
24 the damages herein alleged.

25 13. Plaintiffs are informed and believe, and thereon allege, that each of said
26 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
27 omissions, occurrences, and transactions alleged herein.

28 14. Under California law, Defendants are jointly and severally liable as employers

1 for the violations alleged herein because they have each exercised sufficient control over the
2 wages, hours, working conditions, and employment status of Plaintiffs and class members. Each
3 Defendant had the power to hire and fire Plaintiffs and class members, supervised and controlled
4 their work schedule and/or conditions of employment, determined their rate of pay, and
5 maintained their employment records. Defendants suffered or permitted Plaintiffs and class
6 members to work and/or “engaged” Plaintiffs and class members so as to create a common-law
7 employment relationship. As joint employers of Plaintiffs and class members, Defendants are
8 jointly and severally liable for the civil penalties available to Plaintiffs and class members under
9 the law.

10 15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
11 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and class
12 members because Defendants have:

- 13 (a) jointly exercised meaningful control over the work performed by
14 Plaintiffs and class members;
- 15 (b) jointly exercised meaningful control over Plaintiffs’ and class members’
16 wages, hours, and working conditions, including the quantity, quality
17 standards, speed, scheduling, and operative details of the tasks performed
18 by Plaintiffs and class members;
- 19 (c) jointly required that Plaintiffs and class members perform work which is
20 an integral part of Defendants’ businesses; and
- 21 (d) jointly exercised control over Plaintiffs and class members as a matter of
22 economic reality in that Plaintiffs and class members were dependent on
23 Defendants, who shared the power to set the wages of Plaintiffs and class
24 members and determined their working conditions, and who jointly
25 reaped the benefits from the underpayment of their wages and
26 noncompliance with other statutory provisions governing their
27 employment.

28 16. Plaintiffs are informed and believe, and thereon allege, that at all relevant times

there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

17. HOSPITALITY STAFFING SOLUTIONS, LLC; KELLERMEYER BERGENSONS SERVICES, LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

18. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name HSS.

19. Plaintiffs further allege, upon information and belief, that the Defendants HOSPITALITY STAFFING SOLUTIONS, LLC and KELLERMEYER BERGENSONS SERVICES, LLC are alter egos of each other for the following reasons:

- (a) According to Defendant HOSPITALITY STAFFING SOLUTIONS, LLC's website (<https://www.hssstaffing.com/history/>), HOSPITALITY STAFFING SOLUTIONS, LLC was acquired by KELLERMEYER BERGENSONS SERVICES, LLC in 2020;
- (b) On information and belief, HOSPITALITY STAFFING SOLUTIONS, LLC and KELLERMEYER BERGENSONS SERVICES, LLC together specialize in staffing the hospitality, facility, and janitorial services industries; and
- (c) On information and belief, HOSPITALITY STAFFING SOLUTIONS, LLC and KELLERMEYER BERGENSONS SERVICES, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

20. Defendants are a staffing agency offering staffing services for the hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in

1 Atlanta, Georgia, which is responsible for the recruiting and hiring of new employees, and
2 communicating and implementing Defendants' company-wide policies, including timekeeping
3 policies and meal and rest period policies, to employees throughout California.

4 21. In particular, Plaintiffs and class members, on information and belief, received
5 the same standardized documents and/or written policies. Upon information and belief, the
6 usage of standardized documents and/or written policies, including new-hire documents,
7 indicate that Defendants dictated policies at the corporate level and implemented them
8 company-wide, regardless of their employees' assigned locations or positions. Upon
9 information and belief, Defendants set forth uniform policies and procedures in several
10 documents provided at an employee's time of hire.

11 22. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their company headquarters in Atlanta, Georgia, which processes payroll for all
13 non-exempt, hourly paid employees working for Defendants at their various locations and
14 jobsites in California, including Plaintiffs and class members. Based upon information and
15 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
16 employees in California, irrespective of their work locations. Upon information and belief,
17 Defendants process payroll for departing employees in the same manner throughout the State
18 of California, regardless of the manner in which each employee's employment ends.

19 23. Defendants continue to employ non-exempt or hourly paid employees in
20 California.

21 24. Plaintiffs are informed and believe, and thereon allege, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
23 advisors knowledgeable about California labor and wage law, employment and personnel
24 practices, and about the requirements of California law.

25 25. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
26 class members were not paid for all hours worked because all hours worked were not recorded.

27 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and class members were entitled to receive certain wages for

1 overtime compensation and that they were not receiving certain wages for overtime
2 compensation.

3 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive at least minimum
5 wages for compensation and that they were not receiving at least minimum wages for work that
6 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and
7 class members were not paid at least minimum wages for work done off-the-clock.

8 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and class members were entitled to meal periods in
10 accordance with the California Labor Code and applicable IWC Wage Order or payment of one
11 (1) additional hour of pay at their regular rates of pay when they were not provided with timely,
12 uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not
13 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
14 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

15 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to rest periods in accordance
17 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
18 additional hour of pay at their regular rates of pay when they were not authorized and permitted
19 to take a compliant rest period. In violation of the Labor Code, Plaintiffs and class members
20 were not authorized and permitted to take compliant rest periods, nor did Defendants provide
21 Plaintiffs and class members with payment of one (1) additional hour of pay at their regular
22 rates of pay when they were not authorized and permitted to take a compliant rest period.

23 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and class members were entitled to receive complete and
25 accurate wage statements in accordance with California law. In violation of the California
26 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
27 statements.

28 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
3 knowingly, and intentionally failed to do so.

4 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and class members were entitled to timely payment of all
6 wages earned upon termination of employment. In violation of the California Labor Code,
7 Plaintiffs and class members did not receive payment of all wages due, including, but not limited
8 to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay,
9 within permissible time periods.

10 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and class members were entitled to timely payment of wages
12 during their employment. In violation of the California Labor Code, Plaintiffs and class
13 members did not receive payment of all wages, including, but not limited to, overtime wages,
14 minimum wages, meal and rest period premiums, and/or reporting time pay, within permissible
15 time periods.

16 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiff Matias and class members were entitled to the portion of wages
18 previously paid and subsequently unlawfully deducted by Defendants.

19 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiff Matias and class members were entitled to payment of wages
21 as designated by statute. In violation of the California Labor Code, Defendants secretly paid
22 Plaintiff Matias and class members lower wages than required by statute while purporting to
23 pay them proper wages.

24 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and class members were entitled to receive all reporting time
26 pay when Plaintiffs and class members were required to report to work but were put to work for
27 less than half of their usual or scheduled shift. In violation of the California Labor Code and
28 applicable IWC Wage Order, Plaintiffs and class members were not paid all reporting time pay.

1 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that class members were entitled to receive full reimbursement for all
3 business-related expenses and costs they incurred during the course and scope of their
4 employment and that they did not receive full reimbursement of applicable business-related
5 expenses and costs incurred.

6 38. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 mentioned, Defendants knew or should have known that Defendants had a duty to provide
8 Plaintiffs and class members with written notice of the material terms of their employment with
9 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

10 39. Plaintiffs are informed and believe, and thereon allege, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to compensate
12 Plaintiffs and class members for all hours worked, and that Defendants had the financial ability
13 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
14 represented to Plaintiffs and class members that they were properly denied wages, all in order
15 to increase Defendants' profits.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

17 40. At all times herein set forth, PAGA provides that any provision of law under the
18 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
19 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
20 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
21 behalf of themselves and other current or former employees pursuant to procedures outlined in
22 California Labor Code section 2699.3.

23 41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
24 person who was employed by the alleged violator and against whom one or more of the alleged
25 violations was committed."

26 42. Plaintiffs and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
28 or former employees and one or more of the alleged violations were committed against them.

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

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated, including the facts and theories to support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be accompanied
10 by a filing fee of seventy-five dollars (\$75).
- 11 (c) The LWDA shall notify the employer and the aggrieved employee or
12 representative by certified mail that it does not intend to investigate the
13 alleged violation ("LWDA Notice") within sixty (60) calendar days of the
14 postmark date of the aggrieved employee's notice. Upon receipt of the
15 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
16 calendar days of the postmark date of the aggrieved employee's notice,
17 the aggrieved employee may commence a civil action pursuant to
18 California Labor Code section 2699 to recover civil penalties.

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

- 22 (a) The aggrieved employee or representative shall give written notice by
23 online filing with the LWDA and by certified mail to the employer of the
24 specific provisions of the California Labor Code alleged to have been
25 violated (other than those listed in Section 2699.5), including the facts
26 and theories to support the alleged violation.
- 27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

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

11 45. On March 30, 2023, Plaintiff Matias provided written notice by online filing to
12 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
13 Labor Code alleged to have been violated, including facts and theories to support the alleged
14 violations, in accordance with California Labor Code section 2699.3. Plaintiff Matias's written
15 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
16 PAGA Administrator confirmed receipt of Plaintiff Matias's written notice and assigned
17 Plaintiff Matias PAGA Case Number LWDA-CM-945532-23. A true and correct copy of
18 Plaintiff Matias's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

19 46. On March 30, 2023, Plaintiff Chavez Fernandez provided written notice by
20 online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
21 California Labor Code alleged to have been violated, including facts and theories to support the
22 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Chavez
23 Fernandez's written notice was accompanied with the applicable filing fee of seventy-five
24 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Chavez
25 Fernandez's written notice and assigned Plaintiff Chavez Fernandez PAGA Case Number
26 LWDA-CM-945533-23. A true and correct copy of Plaintiff Chavez Fernandez's written notice
27 to the LWDA and Defendants is attached hereto as "Exhibit 2."

28 47. On March 30, 2023, Plaintiff Membreno de Ayala provided written notice by

1 online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
2 California Labor Code alleged to have been violated, including facts and theories to support the
3 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
4 Membreno de Ayala's written notice was accompanied with the applicable filing fee of seventy-
5 five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Membreno
6 de Ayala's written notice and assigned Plaintiff Membreno de Ayala PAGA Case Number
7 LWDA-CM-945534-23. A true and correct copy of Plaintiff Membreno de Ayala's written
8 notice to the LWDA and Defendants is attached hereto as "Exhibit 3."

9 48. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
10 sent the notices described above to the LWDA, and the LWDA has not responded that it intends
11 to investigate Plaintiffs' claims and Defendants have not cured the violations.

12 49. Thus, Plaintiffs have satisfied the administrative prerequisites under California
13 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
14 violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7,
15 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

16 50. Labor Code section 558(a) provides "[a]ny employer or other person acting on
17 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the Industrial Welfare Commission
19 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
20 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
21 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
22 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
23 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
24 criminal penalty provided by law."

25 51. Defendants, at all times relevant to this complaint, were employers or persons
26 acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees'
27 rights by violating various sections of the California Labor Code as set forth above.

28 52. As set forth below, Defendants have violated numerous provisions of both the

1 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
2 Order.

3 53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
4 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
5 private attorneys general, seek assessment and collection of civil penalties for themselves, all
6 other aggrieved employees, and the State of California against Defendants for violations of
7 California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a),
8 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

9 **CLASS ACTION ALLEGATIONS**

10 54. Plaintiffs brings this action on their own behalf, as well as on behalf of each and
11 all other persons similarly situated, and thus seek class certification under California Code of
12 Civil Procedure section 382.

13 55. All claims alleged herein arise under California law for which Plaintiffs seek
14 relief authorized by California law.

15 56. Plaintiffs' proposed class consists of and is defined as follows:

16 All persons who worked for Defendants as non-exempt, hourly
17 paid employees in California, at any time from November 9, 2021,
until the date of trial ("Class").

18 57. Plaintiffs' proposed subclass consists of and is defined as follows:

19 All persons who worked for Defendants as non-exempt, hourly
20 paid employees in California and who received at least one wage
21 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

22 58. Members of the Class and Subclass are referred to herein as "class members."

23 59. Plaintiffs reserve the right to redefine the Class and Subclass and to add
24 additional subclasses as appropriate based on further investigation, discovery, and specific
25 theories of liability.

26 60. There are common questions of law and fact as to class members that
27 predominate over questions affecting only individual members, including, but not limited to:

28 (a) Whether Defendants required Plaintiffs and class members to work over

1 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
2 hours per week and failed to pay all legally required overtime
3 compensation to Plaintiffs and class members;

4 (b) Whether Defendants failed to pay Plaintiffs and class members at least
5 minimum wages for all hours worked;

6 (c) Whether Defendants failed to provide Plaintiffs and class members meal
7 periods;

8 (d) Whether Defendants failed to authorize and permit Plaintiffs and class
9 members to take rest periods;

10 (e) Whether Defendants provided Plaintiffs and class members with
11 complete and accurate wage statements as required by California Labor
12 Code section 226(a);

13 (f) Whether Defendants maintained accurate payroll records as required by
14 California Labor Code section 1174(d);

15 (g) Whether Defendants failed to pay earned overtime wages, minimum
16 wages, meal and rest period premiums, and/or reporting time pay due to
17 Plaintiffs and class members upon their discharge;

18 (h) Whether Defendants failed to timely pay overtime wages, minimum
19 wages, meal and rest period premiums, and/or reporting time pay to
20 Plaintiffs and class members during their employment;

21 (i) Whether Defendants unlawfully deducted a portion of wages previously
22 paid to Plaintiff Matias and class members, in violation of California
23 Labor Code sections 221 and 224;

24 (j) Whether Defendants secretly paid Plaintiff Matias and class members
25 lower wages than required by statute while purporting to pay the proper
26 wages, in violation of California Labor Code section 223;

27 (k) Whether Defendants required Plaintiffs and class members to report to
28 work, but failed to provide them with work or provided them with less

1 than half their usual or scheduled day's work, without properly
2 compensating them as required by California Code of Regulations, Title
3 8, section 11050(5);

4 (l) Whether Defendants failed to reimburse Plaintiffs and class members for
5 necessary and required business-related expenditures and/or losses
6 incurred by them in the scope of their employment;

7 (m) Whether Defendants failed to provide written notice of information
8 material to Plaintiffs' and class members' employment with Defendants;

9 (n) Whether Defendants engaged in unlawful and unfair business practices in
10 violation of California Business & Professions Code sections 17200, *et*
11 *seq.*; and

12 (o) The appropriate amount of damages, restitution, or monetary penalties
13 resulting from Defendants' violations of California law.

14 61. There is a well-defined community of interest in the litigation and the class
15 members are readily ascertainable:

16 (a) Numerosity: The class members are so numerous that joinder of all
17 members would be unfeasible and impractical. The membership of the
18 entire class is unknown to Plaintiffs at this time; however, the class is
19 estimated to be greater than one hundred (100) individuals and the
20 identity of such membership is readily ascertainable by inspection of
21 Defendants' employment records.

22 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
23 protect the interests of each class member with whom they have a well-
24 defined community of interest, and Plaintiffs' claims (or defenses, if any)
25 are typical of all class members as demonstrated herein.

26 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
27 protect the interests of each class member with whom they have a well-
28 defined community of interest and typicality of claims, as demonstrated

herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

62. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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

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

10 65. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiffs and class members working more than eight (8) hours in a day
12 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
13 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

14 66. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
16 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including nondiscretionary bonuses and incentive pay.

19 67. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
22 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
23 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
24 the seventh (7th) day of work.

25 68. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
27 class members were not paid overtime premiums for all of the hours they worked in excess of
28 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)

1 hours in a week, because all hours worked were not recorded.

2 69. First, Defendants had, and continue to have, a company-wide policy and/or
3 practice of discouraging and impeding Plaintiffs and class members from recording hours
4 worked that were outside their scheduled shifts, in order to limit the amount of overtime
5 employees could accrue. On information and belief, this policy of limiting overtime, coupled
6 with Defendants' practice of understaffing and assignment of heavy workloads (*see infra*), led
7 Plaintiffs and class members to work off-the-clock before and after their scheduled shift times
8 in order to complete their assigned tasks.

9 70. For example, Plaintiffs Matias and Chavez Fernandez were required to arrive
10 prior to their scheduled shift-start times and begin working—preparing their cleaning caddy
11 bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for
12 hotel guest rooms and suites, in order to meet Defendants' expectations of completing daily
13 tasks within their scheduled shift hours. For the same reasons, Plaintiffs Matias and Chavez
14 Fernandez were required to continue working after their scheduled shift end-times, completing
15 tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and
16 returning their cleaning caddy bags to the housekeeping storage area, before they could leave
17 for the day. When this occurred, Plaintiffs were unable to record this off-the-clock work
18 because Defendants' management prohibited them from recording these overtime hours and did
19 not provide them a means to account for this time. This off-the-clock work could have been
20 recorded by Defendants, but they refused to do so to avoid payment of overtime wages to
21 Plaintiffs and class members.

22 71. Second, during the relevant time period, Defendants only provided Plaintiffs and
23 class members with a single timekeeping machine at their clients' facilities to clock in for a
24 shift, thus exacerbating the amount of time Plaintiffs and class members waited in line off-the-
25 clock and under Defendants' control, time for which they were paid. For example, Plaintiffs
26 would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-
27 30 housekeeping employees and wait at least several minutes to clock in. Moreover, Defendants
28 implemented, on a company-wide basis, an employer-imposed requirement that Plaintiffs and

1 class members undergo mandatory COVID-19 temperature checks. Prior to their shifts,
2 Plaintiffs and class members were required to spend time undergoing a temperature check,
3 before being permitted to clock in for their shifts. Even though Defendants required these
4 temperature checks, Defendants did not provide Plaintiffs and class members a mechanism to
5 record this time worked so they could be compensated for the time spent undergoing mandatory
6 temperature checks.

7 72. Third, as stated, Defendants had, and continue to have, a company-wide policy
8 and/or practice of understaffing their jobsites while assigning heavy workloads, resulting in a
9 failure to provide Plaintiffs and class members with adequate meal period coverage. As a result
10 of this lack of meal period coverage, Plaintiffs and class members were not always afforded
11 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
12 period. In addition, Defendants also had a practice of failing to schedule meal periods, which
13 further caused Plaintiffs and class members to not be relieved of their duties for compliant meal
14 periods. For example, Plaintiff Matias was required to work through her meal periods in order
15 to complete her assigned duties. As another example, Plaintiff Chavez Fernandez's meal
16 periods were interrupted because she would be required to answer questions from her supervisor
17 regarding the status of completing her assigned guest rooms or to inform her that a guest had
18 arrived early to the hotel and was ready to check in for their room. Thus, Plaintiff Matias,
19 Plaintiff Chavez Fernandez, and class members worked through their meal periods and/or had
20 meal periods interrupted or cut short in order to complete their assigned workloads. Defendants
21 did not pay Plaintiffs and class members for the time they continued to perform tasks during
22 meal periods.

23 73. Fourth, on information and belief, Defendants maintained a company-wide on-
24 premises meal period policy, which mandated that Plaintiffs and class members remain on
25 Defendants' premises during their unpaid meal periods. Because Plaintiffs and class members
26 were restricted from leaving the premises during meal periods, they were denied the ability to
27 use their meal periods freely for their own purposes. For example, Plaintiffs and class members
28 were unable to run personal errands because they were unable to leave the work premises. Thus,

1 Defendants effectively maintained control over Plaintiffs and class members during their unpaid
2 meal periods.

3 74. Fifth, on information and belief, because Defendants frowned upon employees
4 accruing meal period penalties, Defendants falsified and/or adjusted Plaintiffs' and/or class
5 members' time records and/or pressured Plaintiffs and/or class members to clock out for meal
6 periods to reflect compliant meal periods, even when they did not receive a compliant meal
7 period. For example, while Plaintiff Matias was busy completing her assigned tasks, she would
8 receive calls from her supervisor requesting she give him her employee PIN code so he could
9 clock out Plaintiff Matias for her meal periods in order to make them appear compliant. As
10 another example, while Plaintiff Chavez Fernandez was too busy with her workload to take a
11 compliant meal period, her supervisor would tell her not to worry about accruing a meal period
12 penalty because she would adjust Plaintiff Chavez Fernandez's meal period punch times to make
13 them appear compliant.

14 75. Furthermore, Defendants' company-wide timekeeping system prevented
15 Plaintiffs and class members from recording all hours worked when their meal periods were
16 shortened or interrupted, because the system locked out Plaintiffs and class members once they
17 clocked out for a meal period, and would not permit them to clock back in from a meal period
18 before 30 minutes had elapsed. Thus, Defendants did not record all hours worked during meal
19 periods and Plaintiffs and class members performed work during meal periods for which they
20 were not paid.

21 76. Defendants knew or should have known that, as a result of these company-wide
22 practices and/or policies, Plaintiffs and class members were performing their assigned duties
23 off-the-clock before and after their shifts and during meal periods, and were suffered or
24 permitted to perform work for which they were not paid. Because Plaintiffs and class members
25 worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this
26 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and class
27 members were not paid overtime wages for all of the overtime hours they actually worked.

28 77. Defendants' failure to pay Plaintiffs and class members the balance of overtime

1 compensation as required by California law, violates the provisions of California Labor Code
2 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class
3 members are entitled to recover from Defendants their unpaid overtime compensation, as well
4 as interest, costs, and attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 7 **Minimum Wages** 8 **(Against all Defendants)**

9 78. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
10 every allegation set forth above.

11 79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
12 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
13 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
14 Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which
15 an employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8,
17 § 11050(2)(K) (defining "Hours Worked").

18 80. As stated above, due to Defendants' company-wide practice of restricting
19 overtime accrual by not recording hours worked that were outside of employees' scheduled
20 shifts, Defendants systematically failed to pay Plaintiffs and class members for actual hours
21 worked before and after their scheduled shifts, because these hours were not accurately
22 recorded. Thus, Plaintiffs and class members were required to perform work off-the-clock,
23 including, but not limited to, completing work-related tasks, waiting to clock in, and submitting
24 to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time.
25 Additionally, as set forth above, due to Defendants' uniform practices of understaffing,
26 assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay
27 on the work premises during meal periods, and resultant lack of meal period coverage, Plaintiffs
28 and class members were impeded from taking all uninterrupted meal periods to which they were

entitled and were required to work off-the-clock.

81. Moreover, as stated, on information and belief, in order to limit the meal penalties that Defendants would otherwise owe, Defendants falsified and/or adjusted Plaintiffs' and/or class members' times records and/or pressured Plaintiffs and/or class members to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, Defendants systematically failed to pay Plaintiffs and class members for actual hours worked during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiffs and class members for 30 minutes when they clocked out for a meal period. Thus, Defendants systematically failed to pay Plaintiffs and class members for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

82. Defendants did not pay minimum wages for all hours worked by Plaintiffs and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

83. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

84. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

85. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and

1 class members' employment by Defendants. At all relevant times herein set forth, California
2 Labor Code section 512(a) provides that an employer may not require, cause, or permit an
3 employee to work for a period of more than five (5) hours per day without providing the
4 employee with a meal period of not less than thirty (30) minutes, except that if the total work
5 period per day of the employee is not more than six (6) hours, the meal period may be waived
6 by mutual consent of both the employer and the employee. Under California law, first meal
7 periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.
8 4th 1004, 1041-1042 (2012).

9 86. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 87. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
13 the applicable IWC Wage Order also require employers to provide a second meal period of not
14 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
15 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
16 hours worked is no more than twelve (12) hours, the second meal period may be waived by
17 mutual consent of the employer and the employee only if the first meal period was not waived.

18 88. First, as stated, Defendants had, and continue to have, company-wide policies
19 and/or practices of understaffing, while simultaneously assigning heavy workloads, which
20 resulted in a lack of meal period coverage and prevented Plaintiffs and class members from
21 taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated,
22 Defendants had a company-wide practice of failing to schedule meal periods, which further
23 prevented Plaintiffs and class members from taking all compliant meal periods. As a result of
24 Defendants' practices and/or policies, Plaintiffs and class members were forced to work in
25 excess of five (5) hours before taking a meal period and, at times, had their meal periods
26 interrupted, and/or had to forgo their meal periods altogether. For example, Plaintiffs were
27 required to take their meal periods late in order to meet guest check-in timeframes and to keep
28 up with Defendants' productivity expectations. As another example, Plaintiff Matias and

1 Plaintiff Chavez Fernandez had their meal periods interrupted or cut short by supervisors
2 discussing the status of assigned guest rooms.

3 89. Second, as stated, on information and belief, Defendants maintained a company-
4 wide on-premises meal period policy, which mandated that Plaintiffs and class members remain
5 on the work premises during their meal periods. Because Plaintiffs and class members were
6 restricted from leaving the premises during meal periods, they were denied the ability to use
7 their meal periods freely for their own purposes, such as running personal errands. Thus,
8 Defendants effectively maintained control over Plaintiffs and class members during meal
9 periods.

10 90. Third, as set forth above, on information and belief, in order to limit the meal
11 penalties that Defendants would otherwise owe, Defendants falsified and/or adjusted Plaintiffs'
12 and/or class members' time records and/or pressured Plaintiffs and/or class members to clock
13 out for meal periods to reflect compliant meal periods, even when they did not receive a
14 compliant meal period. Also, as set forth above, during the relevant time period, Defendants
15 systematically failed to pay Plaintiffs and class members for actual hours worked during unpaid
16 meal periods, because Defendants' timekeeping system locked out Plaintiffs and class members
17 for 30 minutes when they clocked out for a meal period.

18 91. Fourth, Defendants did not provide Plaintiff Matias and class members with
19 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
20 For example, during the relevant time period, Plaintiff Matias worked shifts in excess of ten
21 (10) hours per day but was not provided a second 30-minute meal period. Plaintiffs and class
22 members did not sign valid meal period waivers on days that they were entitled to meal periods
23 and were not relieved of all duties.

24 92. Moreover, Defendants had a company-wide policy of requiring all newly hired
25 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
26 the position that non-exempt, hourly paid employees had waived their rights to first and/or
27 second meal periods for the entirety of their employment and, on that basis, did not provide
28 them with all meal periods to which they were entitled. Moreover, Defendants' meal period

1 waiver form requires employees provide written notice should they wish to revoke the waiver.
2 Defendants' presumption that meal periods would not be provided for shifts in excess of five
3 (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve
4 (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition
5 on employees to revoke the waivers in writing, discouraged and impeded Plaintiffs and class
6 members from taking all meal periods to which they were entitled.

7 93. Furthermore, an employer's obligation to provide a meal period is only
8 "triggered" when the employer "employs an employee for a work period of more than five hours
9 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
10 work for a full five hours, its meal break obligation is triggered.").

11 [A]fter the meal break obligation is triggered . . . an employer is put to a
12 choice: it must (1) afford an off-duty meal period; (2) consent to a
13 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
14 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

15 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
16 required Plaintiffs and class members to sign meal period waivers simultaneously at and/or near
17 their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable,
18 because Defendants' obligation to provide Plaintiffs and class members with meal periods did
19 not arise until they had employed them for a full five (5) hours.

20 94. At all times mentioned herein, Defendants knew or should have known that as a
21 result of their policies, Plaintiffs and class members were not actually relieved of all duties to
22 take timely, uninterrupted meal periods. Defendants further knew or should have known that
23 they did not pay Plaintiffs and class members meal period premiums when meal periods were
24 late, interrupted, shortened, and/or missed.

25 95. Furthermore, Defendants engaged in a company-wide practice and/or policy of
26 not paying meal period premiums owed when compliant meal periods are not provided.
27 Because of this practice and/or policy, Plaintiffs and class members have not received premium
28 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide

1 Plaintiffs and class members compliant meal periods in violation of California Labor Code
2 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

3 96. Defendants' conduct violates the applicable IWC Wage Order, and California
4 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore
5 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
6 rate of compensation for each work day that the meal period was not provided.

7 **FOURTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 9 **(Against all Defendants)**

10 97. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
11 every allegation set forth above.

12 98. At all relevant times herein set forth, the applicable IWC Wage Order and
13 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class
14 members' employment by Defendants.

15 99. At all relevant times, the applicable IWC Wage Order provides that "[e]very
16 employer shall authorize and permit all employees to take rest periods, which insofar as
17 practicable shall be in the middle of each work period" and that the "rest period time shall be
18 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
19 hours or major fraction thereof" unless the total daily work time is less than three and one-half
20 (3 ½) hours.

21 100. At all relevant times, California Labor Code section 226.7 provides that no
22 employer shall require an employee to work during any rest period mandated by an applicable
23 order of the California IWC. To comply with its obligation to authorize and permit rest periods
24 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
25 must "relinquish any control over how employees spend their break time, and relieve their
26 employees of all duties—including the obligation that an employee remain on call. A rest
27 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
28 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code

1 section 226.7(c), Plaintiffs and class members are entitled to recover from Defendants one (1)
2 additional hour of pay at their regular rates of pay for each work day that a required rest period
3 was not authorized and permitted.

4 101. During the relevant time period, Defendants regularly failed to authorize and
5 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour
6 period worked or major fraction thereof. As with meal periods, Defendants' policies and/or
7 practices of understaffing and assigning heavy workloads prevented Plaintiffs and class
8 members from being relieved of all duty in order to take compliant rest periods. Defendants
9 also failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate
10 rest period coverage, further led to Plaintiffs and class members not being authorized and
11 permitted to take rest periods.

12 102. Furthermore, Defendants maintained a company-wide on-premises rest period
13 policy, which mandated that Plaintiffs and class members remain on the work premises during
14 their rest periods. Because Plaintiffs and class members were restricted from leaving the
15 premises during rest periods, they were denied the ability to use their rest periods freely for their
16 own purposes, such as running personal errands. Thus, Defendants effectively maintained
17 control over Plaintiffs and class members during rest periods.

18 103. As a result of Defendants' practices and policies, Plaintiffs and class members
19 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
20 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
21 Plaintiffs would sometimes have to forego their rest periods altogether due to the heavy
22 workload and lack of rest period coverage. When Plaintiffs were able to take their rest periods,
23 they were often interrupted because they were required to discuss the status of completing their
24 assigned guest rooms.

25 104. Defendants also have engaged in a company-wide practice and/or policy of not
26 paying rest period premiums owed when compliant rest periods are not authorized and
27 permitted. Because of this practice and/or policy, Plaintiffs and class members have not
28 received premium pay for all missed rest periods.

105. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records (Against all Defendants)

106. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

107. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

108. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

109. Because Defendants did not accurately record the time Plaintiffs and Subclass members spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same

1 reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and
2 Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly rates
3 of pay in effect during the pay period and corresponding accurate number of work hours worked
4 at each hourly rate in violation of section 226(a)(9).

5 110. Additionally, and separately from these violations, Defendants issued uniform
6 wage statements to Plaintiffs and Subclass members that failed to list the name and address of
7 the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
8 226(a)(8) is to provide California employees with transparency as to the true identity of their
9 employer, to allow the employee to contact their employer during employment or in the future
10 for various reasons, including filing an administrative claim, judicial claim, or other action to
11 seek relief against their employer, to obtain unemployment benefits, etc. During the relevant
12 time period, Defendants systematically, and on a company-wide basis, issued wage statements
13 to Plaintiffs and Subclass members that fail to list the employing entity's name and address.

14 111. The wage statement deficiencies also include, without limitation, failing to list
15 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
16 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
17 which employees were paid; failing to list the name of the employee and only the last four digits
18 of his or her social security number or an employee identification number other than a social
19 security number; and/or failing to state all hours worked as a result of not recording or stating
20 hours worked off-the-clock.

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

1 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass
3 members the daily hours they worked and the wages paid thereto as a result of failing to record
4 the off-the-clock hours that they worked.

5 113. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
7 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
8 of any employees for longer hours than those fixed by the order or under conditions of labor
9 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
10 are required to keep accurate time records showing when the employee begins and ends each
11 work period and meal period. During the relevant time period, Defendants engaged in company-
12 wide practices and/or policies of failing to record actual hours worked (including falsifying time
13 records by recording that compliant meal periods were taken regardless of if or when meal
14 periods were actually taken), and thereby failed to keep accurate records of work and meal
15 period start and stop times for Plaintiffs and Subclass members, in violation of section 1198.
16 Furthermore, in light of Defendants’ failure to provide Plaintiff Matias and Subclass members
17 with second 30-minute meal periods to which they were entitled, Defendants kept no records of
18 meal start and end times for second meal periods.

19 114. Plaintiffs and Subclass members are entitled to recover from Defendants the
20 greater of their actual damages caused by Defendants’ failure to comply with California Labor
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
22 employee.

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 201, 201.3, and 202—Wages Not Timely Paid**

25 **Upon Termination**

26 **(Against all Defendants)**

27 115. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
28 every allegation set forth above.

116. At all times relevant herein set forth, California Labor Code sections 201, 201.3, and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

117. During the relevant time period, on information and belief, Defendants had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Defendants terminated Plaintiffs on or about August 28, 2022. However, Defendants did not provide them with their final paycheck until one (1) week later. Thus, Defendants failed to pay Plaintiffs their final wages immediately, in violation of Labor Code sections 201 and/or 201.3.

118. Additionally, Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

119. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201, 201.3, and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code §§ 201.3 and 204—Failure to Timely Pay Wages
During Employment
(Against all Defendants)

120. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

121. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiffs and class members during their employment.

122. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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

124. At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

125. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

126. Defendants' failure to pay Plaintiffs and class members all wages due violates Labor Code sections 201.3 and 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

**Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay
(Against all Defendants)**

127. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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

129. The applicable IWC Wage Order, California Code of Regulations, Title 8, section 11050(5)(A), provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v.*

1 *AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

2 130. During the relevant time period, Defendants violated California Labor Code
3 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
4 Defendants failed to pay Plaintiffs Chavez Fernandez and Membreno de Ayala and class
5 members reporting time pay when they reported to work for their usual or scheduled shift but
6 were put to work for less than half of their usual or scheduled day's work.

7 131. Defendants had a company-wide practice of sending Plaintiffs and class
8 members home early from their shifts, including before they had worked at least half of their
9 usual or scheduled shift, but would not pay Plaintiffs and class members for half of their
10 scheduled shift. For example, Defendants' managers sent Plaintiff Chavez Fernandez home
11 within one (1) hour from the start of her shift because business was slow, but she was only paid
12 for the time she had worked. Similarly, Defendants' managers sent Plaintiff Membreno de
13 Ayala home within three (3) hours from the start of her shift because business was slow, but she
14 was only paid for the time she had worked. Although Plaintiffs and class members reported to
15 work based on the schedule that was provided to them, Defendants would send them home
16 before they worked at least half of their usual or scheduled shifts. When this occurred,
17 Defendants did not pay Plaintiffs and class members for at least half of their scheduled day's
18 work or the minimum reporting time pay.

19 132. Accordingly, Plaintiffs and class members were not properly compensated with
20 reporting time pay in violation of California Labor Code section 1198 and California Code of
21 Regulations, Title 8, section 11050(5)(A). Plaintiffs and class members are therefore entitled
22 to recover from Defendants unpaid wages and interest.

23 **NINTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 25 **(Against all Defendants)**

26 133. Plaintiffs incorporate and re-allege as if fully stated herein each and every
27 allegation set forth above.

28 134. At all times herein set forth, California Labor Code section 2802 provides that

1 an employer must reimburse employees for all necessary expenditures and losses incurred by
2 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
3 to prevent employers from passing off their cost of doing business and operating expenses on
4 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
5 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools
6 or equipment are required by the employer or are necessary to the performance of a job, such
7 tools and equipment shall be provided and maintained by the employer, except that an employee
8 whose wages are at least two (2) times the minimum wage provided herein may be required to
9 provide and maintain hand tools and equipment customarily required by the trade or craft.”

10 135. During the relevant time period, Defendants, on a company-wide basis, required
11 that Plaintiffs and class members use their own personal mobile devices, including, but not
12 limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to
13 reimburse them for the costs of their work-related mobile device expenses. Specifically,
14 Plaintiffs used their personal cellular phones to communicate with managers regarding the status
15 of cleaning their assigned guest suites and other work-related tasks, and were further required
16 to watch training videos on proper cleaning techniques on their personal cellular phones.
17 Although Defendants required Plaintiffs and class members to utilize their personal mobile
18 devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to
19 reimburse them for this cost.

20 136. Defendants could have provided Plaintiffs and class members with the actual
21 equipment for use on the job, such as company mobile devices, or, Defendants could have
22 reimbursed employees for the costs of their mobile device usage. Instead, Defendants passed
23 these operating costs off onto Plaintiffs and class members. At all relevant times, Plaintiffs did
24 not earn at least two (2) times the minimum wage.

25 137. Defendants' company-wide policy and/or practice of passing on their operating
26 costs to Plaintiffs and class members violates California Labor Code section 2802.
27 Defendants have intentionally and willfully failed to reimburse Plaintiffs and class members
28 for necessary business-related expenses and costs.

138. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

TENTH CAUSE OF ACTION

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

(Against All Defendants)

139. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

140. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

141. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiffs and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiffs and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiffs and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable

1 IWC Wage Order for Defendants' failure to authorize and permit
2 Plaintiffs and other aggrieved employees to take rest periods, as alleged
3 herein;

4 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
5 IWC Wage Order for failure to provide accurate and complete wage
6 statements to Plaintiffs and other aggrieved employees, as alleged herein;

7 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
8 IWC Wage Order for failure to maintain payroll records, as alleged
9 herein;

10 (g) Violation of Labor Code sections 201, 201.3, and 202 for failure to pay
11 all earned wages upon termination, as alleged herein;

12 (h) Violation of Labor Code sections 201.3 and 204 for failure to pay all
13 earned wages during employment, as alleged herein;

14 (i) Violation of Labor Code sections 221 and 224 for unlawfully deducting
15 a portion of wages previously paid to Plaintiff Matias and other aggrieved
16 employees, as set forth below;

17 (j) Violation of Labor Code section 223 for secretly paying Plaintiff Matias
18 and other aggrieved employees lower wages than required by statute,
19 while purporting to pay the proper wages, as set forth below;

20 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
21 Order for failing to pay reporting time pay to Plaintiffs and other
22 aggrieved employees, as alleged herein;

23 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
24 and other aggrieved employees for all business expenses necessarily
25 incurred, as alleged herein; and

26 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
27 provide written notice of information material to Plaintiffs' and other
28 aggrieved employees' employment with Defendants, as set forth below.

1 142. At all times relevant herein, California Labor Code section 221 provides that it
2 shall be unlawful for any employer to collect or receive from an employee any part of wages
3 theretofore paid by said employer to said employee. California Labor Code section 224 also
4 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
5 deduction is expressly authorized in writing by the employee."

6 143. During the relevant time period, Defendants unlawfully deducted a portion of
7 wages previously paid to Plaintiff Matias and other aggrieved employees in violation of
8 California Labor Code section 221. On information and belief, Defendants systematically, and
9 on a company-wide basis, provided Plaintiff Matias and other aggrieved employees with payroll
10 debit cards as payment of their wages. Under Defendants' payroll debit card program, Plaintiff
11 Matias and other aggrieved employees were assessed various fees in connection with their use
12 of the payroll debit cards. For example, Plaintiff Matias was required to pay out-of-network
13 ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or
14 decline fees, inactivity fees, and/or other fees to obtain and/or spend her earned and due wages.
15 The fees charged to Plaintiff Matias and other aggrieved employees resulted in a discount of
16 their wages.

17 144. Defendants' conduct as alleged herein violates California Labor Code sections
18 221 and 224. Plaintiff Matias and other aggrieved employees are therefore entitled to recover
19 civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

20 145. At all times, California Labor Code section 223 makes it unlawful for an
21 employer to secretly pay wages lower than required by statute while purporting to pay legal
22 wages.

23 146. During the relevant time period, Defendants willfully and systematically issued
24 payroll debit cards to Plaintiff Matias and other aggrieved employees that discounted their
25 wages by charging various fees in connection with the use of the payroll debit cards.
26 Defendants' payroll debit card program resulted in the payment of less than statutorily required
27 wages to Plaintiff Matias and other aggrieved employees. In doing so, Defendants acted with
28 the intent to deprive Plaintiff Matias and other aggrieved employees of statutory wages,

1 including, but not limited to, overtime wages and/or minimum wages, to which they were
2 entitled to under California law. Thus, Defendants paid Plaintiff Matias and other aggrieved
3 employees lower wages than those they were entitled to while purporting that Plaintiff Matias
4 and other aggrieved employees were properly paid.

5 147. Defendants' failure to pay Plaintiff Matias and other aggrieved employees the
6 correct designated wage, while purporting to pay legal wages, is a violation of California Labor
7 Code section 223. Plaintiff Matias and other aggrieved employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

9 148. At all relevant times herein, California's Wage Theft Prevention Act was enacted
10 to ensure that employers provide employees with basic information material to their
11 employment relationship at the time of hiring, and to ensure that employees are given written
12 and timely notice of any changes to basic information material to their employment. Codified
13 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
14 time of hiring, an employer must provide written notice to employees containing basic and
15 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
16 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
17 any rates for overtime, the regular payday designated by the employer, and any allowances
18 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
19 § 2810.5(a)(1)(A)-(C).

20 149. At all relevant times, on information and belief, Defendants failed, on a
21 company-wide basis, to provide written notice to Plaintiffs and other aggrieved employees that
22 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants'
23 failure to provide Plaintiffs and other aggrieved employees with written notice of basic
24 information regarding their employment with Defendants is in violation of Labor Code section
25 2810.5. Plaintiffs and other aggrieved employees are therefore entitled to recover civil penalties
26 pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 150. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
6 every allegation set forth above.

7 151. Defendants are “persons” as defined by California Business & Professions Code
8 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
9 associations.

10 152. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
12 suffered injuries in fact and have lost money as a result of Defendants’ unlawful business
13 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 153. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business & Professions
17 Code sections 17200, *et seq.*

18 154. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
27 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 28 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class

members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(d) Failing to authorize and permit Plaintiffs and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(e) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code sections 201.3 and 204, as alleged herein;

(g) Collecting or receiving wages already paid from Plaintiff Matias and class members in violation of California Labor Code sections 221 and 224, as set forth below;

(h) Failing to pay the statutorily designated wage scale in violation of California Labor Code section 223, as set forth below;

(i) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein;

(j) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and

(k) Failing to provide written notice of information material to Plaintiffs' and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

155. At all times relevant herein, California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages

1 theretofore paid by said employer to said employee. California Labor Code section 224 also
2 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
3 deduction is expressly authorized in writing by the employee."

4 156. During the relevant time period, Defendants unlawfully deducted a portion of
5 wages previously paid to Plaintiff Matias and class members in violation of California Labor
6 Code section 221. On information and belief, Defendants systematically, and on a company-
7 wide basis, provided Plaintiff Matias and class members with payroll debit cards as payment of
8 their wages. Under Defendants' payroll debit card program, Plaintiff Matias and class members
9 were assessed various fees in connection with their use of the payroll debit cards. For example,
10 Plaintiff Matias was required to pay out-of-network ATM withdrawal fees, cash back fees from
11 purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to
12 obtain and/or spend her earned and due wages. The fees charged to Plaintiff Matias and class
13 members resulted in a discount of their wages.

14 157. Defendants' payroll debit card program, which resulted in a discount of wages
15 to employees, is tantamount to taking deductions from Plaintiff Matias's and class members'
16 paychecks without their written authorization and therefore constitutes an unlawful deduction
17 of wages, in violation of California Labor Code sections 221 and 224.

18 158. At all times, California Labor Code section 223 makes it unlawful for an
19 employer to secretly pay wages lower than required by statute while purporting to pay legal
20 wages.

21 159. During the relevant time period, Defendants willfully and systematically issued
22 payroll debit cards to Plaintiff Matias and class members that discounted their wages by
23 charging various fees in connection with the use of the payroll debit cards. Defendants' payroll
24 debit card program resulted in the payment of less than statutorily required wages to Plaintiff
25 Matias and class members. In doing so, Defendants acted with the intent to deprive Plaintiffs
26 and/or class members of statutory wages, including, but not limited to, overtime wages and/or
27 minimum wages, to which they were entitled to under California law. Thus, Defendants paid
28 Plaintiff Matias and class members lower wages than those they were entitled to while

1 purporting that Plaintiff Matias and class members were properly paid.

2 160. Defendants' failure to pay Plaintiff Matias and class members the correct
3 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
4 section 223.

5 161. At all relevant times herein, California's Wage Theft Prevention Act was enacted
6 to ensure that employers provide employees with basic information material to their
7 employment relationship at the time of hiring, and to ensure that employees are given written
8 and timely notice of any changes to basic information material to their employment. Codified
9 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
10 time of hiring, an employer must provide written notice to employees containing basic and
11 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
12 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
13 any rates for overtime, the regular payday designated by the employer, and any allowances
14 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
15 § 2810.5(a)(1)(A)-(C).

16 162. At all relevant times, Defendants failed, on a company-wide basis, to provide
17 written notice to Plaintiffs and class members that lists the requisite information set forth in
18 Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and class
19 members with written notice of basic information regarding their employment with Defendants
20 is in violation of California Labor Code section 2810.5.

21 163. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have
23 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

24 164. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiffs and class members are entitled to restitution of the wages withheld and retained by
26 Defendants during a period that commences four years prior to the filing of this complaint; a
27 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
28 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure

1 section 1021.5 and other applicable laws; and an award of costs.

2 **TWELFTH CAUSE OF ACTION**

3 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

4 **Unfair Business Practices**

5 **(Against all Defendants)**

6 165. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
7 every allegation set forth above.

8 166. Defendants are “persons” as defined by California Business & Professions Code
9 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
10 associations.

11 167. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
12 harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injuries
13 in fact and have lost money as a result of Defendants’ unfair business practices. Plaintiffs seek
14 to enforce important rights affecting the public interest within the meaning of Code of Civil
15 Procedure section 1021.5.

16 168. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
17 of not paying Plaintiffs and class members all meal and rest period premiums due to them under
18 Labor Code section 226.7, deprived Plaintiffs and class members of the compensation guarantee
19 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
20 section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
21 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
22 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiffs and
23 class members as part of their employment with Defendants, and thus Defendants’ practice
24 and/or policy of denying these statutory benefits constitutes an unfair business practice in
25 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

26 169. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
28 practices have violated the spirit of California’s meal and rest period laws and constitute acts

1 against the public policy behind these laws.

2 170. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
5 commences four years prior to the filing of this complaint; a permanent injunction requiring
6 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs and class
7 members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiffs request a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against
13 Defendants, jointly and severally, as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
16 reserve the right to amend their prayer for relief to seek a different amount.

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;
20 4. That counsel for Plaintiffs be appointed as class counsel.

21 **As to the First Cause of Action**

22 5. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
24 pay all overtime wages due to Plaintiffs and class members;

25 6. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;

27 7. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiffs and class members;

17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 21. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 22. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fourth Cause of Action**

7 23. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
9 failing to authorize and permit Plaintiffs and class members to take all rest periods;

10 24. That the Court make an award to the Plaintiffs and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a rest period was not
12 authorized and permitted;

13 25. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 26. For premiums pursuant to California Labor Code section 226.7(c);

16 27. For pre-judgment interest on any unpaid rest period premiums from the date such
17 amounts were due, or as otherwise provided by law;

18 28. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 29. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fifth Cause of Action**

23 30. That the Court declare, adjudge and decree that Defendants violated the
24 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
25 Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate
26 itemized wage statements thereto;

27 31. For all actual, consequential, and incidental losses and damages, according to
28 proof;

- 1 32. For injunctive relief pursuant to California Labor Code section 226(h);
2 33. For statutory penalties pursuant to California Labor Code section 226(e);
3 34. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 35. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Sixth Cause of Action**

8 36. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201, 201.3, and 202 by willfully failing to pay overtime wages, minimum
10 wages, meal and rest period premiums, and/or reporting time pay owed at the time of
11 termination of the employment of Plaintiffs and other terminated class members;

12 37. For all actual, consequential and incidental losses and damages, according to
13 proof;

14 38. For waiting time penalties according to proof pursuant to California Labor Code
15 section 203 for all employees who have left Defendants' employ;

16 39. For pre-judgment interest on any unpaid wages from the date such amounts were
17 due, or as otherwise provided by law;

18 40. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 41. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Seventh Cause of Action**

23 42. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 201.3 and 204 by willfully failing to timely pay Plaintiffs and class
25 members overtime wages, minimum wages, meal and rest period premiums, and/or reporting
26 time pay during their employment;

27 43. For all actual, consequential and incidental losses and damages, according to
28 proof;

1 44. For statutory penalties according to proof pursuant to California Labor Code
2 section 210;

3 45. For pre-judgment interest on any unpaid wages from the date such amounts were
4 due, or as otherwise provided by law;

5 46. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 47. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Eighth Cause of Action**

10 48. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by
12 failing to provide Plaintiffs and class members with reporting time pay;

13 49. For all actual, consequential and incidental losses and damages, according to
14 proof;

15 50. For pre-judgment interest on any unpaid wages from the date such amounts were
16 due, or as otherwise provided by law; and

17 51. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Ninth Cause of Action**

20 52. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
22 expenses and costs incurred by Plaintiffs and class members;

23 53. For unpaid business-related expenses and such general and special damages as
24 may be appropriate;

25 54. For pre-judgment interest on any unpaid business-related expenses from the date
26 such amounts were due, or as otherwise provided by law;

27 55. For all actual, consequential, and incidental losses and damages, according to
28 proof;

1 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
2 or as otherwise provided by law; and

3 57. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Tenth Cause of Action**

6 58. That the Court declare, adjudge and decree that Defendants violated the
7 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
8 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
9 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
10 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
11 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
12 statements and maintain accurate payroll records); 201, 201.3, and 202 (by failing to timely pay
13 all earned wages upon termination); 201.3 and 204 (by failing to timely pay all earned wages
14 during employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by
15 secretly paying wages lower than required by statute); 1198 and the applicable IWC Wage Order
16 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses);
17 and 2810.5 (by failing to provide written notice of material terms of employment);

18 59. For civil penalties pursuant to the California Labor Code, including sections
19 210, 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor
20 Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d),
21 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

22 60. For attorneys' fees and costs pursuant to California Labor Code section
23 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
24 Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516,
25 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5; and

26 61. For pre-judgment and post-judgment interest as provided by law; and for such
27 other and further relief as the Court may deem equitable and appropriate.

28 ///

As to the Eleventh Cause of Action

62. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing to timely pay Plaintiffs and class members all earned wages during employment, failing to pay Plaintiffs and class members reporting time pay, unlawfully deducting a portion of wages previously paid, secretly paying a lower wage, failing to reimburse Plaintiffs and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

63. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

64. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

66. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

67. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

1 68. For restitution of the statutory benefits under section 226.7 unfairly withheld
2 from Plaintiffs and class members and prejudgment interest from the day such amounts were
3 due and payable;

4 69. For the appointment of a receiver to receive, manage and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of violations of California Business & Professions Code sections 17200,
7 *et seq.*;

8 70. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure section 1021.5;

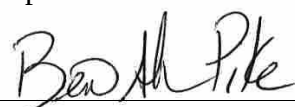
10 71. For pre-judgment and post-judgment interest as provided by law; and

11 72. For such other and further relief as the Court may deem equitable and
12 appropriate.
13

14 Dated: June 5, 2023,

Respectfully submitted,

Capstone Law APC

16 By: 
17 _____

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

19 Attorneys for Plaintiffs Juana Matias, Carmen
20 Chavez Fernandez, and Yolanda Membreno de
21 Ayala
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EXHIBIT “1”



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March 30, 2023

VIA ONLINE SUBMISSION

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

Subject: *Juana Matias v. Hospitality Staffing Solutions, LLC, et al.*

Dear PAGA Administrator:

This office represents Juana Matias in connection with her claims under the California Labor Code. Ms. Matias was an employee of HOSPITALITY STAFFING SOLUTIONS, LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purposes of this letter, Ms. Matias collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Matias intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Matias seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

HSS employed Ms. Matias as an hourly paid, non-exempt employee from approximately January 2019 to August 2022. Ms. Matias worked as a Housekeeper at HSS's jobsite located in Aptos, California. Ms. Matias typically worked eight (8) hours per day or more, and five (5) days per week or more. At the time Ms. Matias's employment ended with HSS, she was compensated approximately \$20.00 per hour. Her primary job duties included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

HSS committed one or more of the following Labor Code violations against Ms. Matias, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

HSS’s Company-Wide and Uniform Payroll and HR Practices

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Matias and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Matias and other aggrieved employees, regardless of their location or position.

Upon information and belief, HSS maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for HSS in California, including Ms. Matias and other aggrieved employees. Further, HSS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Matias and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HSS utilized the same methods and formulas when calculating wages due to Ms. Matias and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

HSS willfully failed to pay all overtime wages owed to Ms. Matias and other aggrieved employees. During the relevant time period, Ms. Matias and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10)

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

hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, HSS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Matias and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads (*see infra*), led Ms. Matias and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

For example, Ms. Matias was required to arrive up to 30 minutes prior to her scheduled shift-start times and begin working—preparing her cleaning caddy bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet HSS's expectations of completing daily tasks within her scheduled shift hours. For the same reasons, Ms. Matias and other aggrieved employees were required to continue working 10-15 minutes after their scheduled shift end-times, completing tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and returning their cleaning caddy bags to the housekeeping storage area, before they could leave for the day. When this occurred, Ms. Matias and other aggrieved employees were unable to record this off-the-clock work because HSS's management prohibited them from recording these overtime hours and did not provide them a means to account for this time. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to Ms. Matias and other aggrieved employees.

Second, during the relevant time period, HSS only provided Ms. Matias and other aggrieved employees with a single timekeeping machine at its clients' facilities to clock in for a shift, thus exacerbating the amount of time Ms. Matias and other aggrieved employees waited in line off-the-clock and under HSS's control, time for which they were paid. For example, Ms. Matias and other aggrieved employees would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-30 housekeeping employees and wait at least several minutes to clock in. Moreover, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Matias and other aggrieved employees undergo mandatory COVID-19 temperature checks. Prior to their shifts, Ms. Matias and other aggrieved employees were required to spend time undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these temperature checks, HSS did not provide Ms. Matias and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks.

Third, as stated, HSS had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Ms. Matias and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Matias and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. In addition, HSS also had a practice of failing to schedule meal periods, which further caused Ms. Matias and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Matias was required to work through her meal periods approximately three (3) times per week in order to complete her assigned duties. As another example, other aggrieved employees' meal periods were interrupted because they would be required to answer questions from their supervisor regarding the status of completing assigned guest rooms or to inform them that a

guest had arrived early to the hotel and was ready to check in for their room. Thus, Ms. Matias and other aggrieved employees worked through their meal periods and/or had meal periods interrupted or cut short in order to complete their assigned workloads. HSS did not pay Ms. Matias and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Matias and other aggrieved employees remain on HSS's premises during their unpaid meal periods. Because Ms. Matias and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Ms. Matias and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, HSS effectively maintained control over Ms. Matias and other aggrieved employees during their unpaid meal periods.

Moreover, on information and belief, HSS had a company-wide practice and/or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, HSS's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. HSS knew or should have known that other aggrieved employees were performing work while off-the-clock in order to meet HSS's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS falsified and/or adjusted Ms. Matias's and/or other aggrieved employees' time records and/or pressured Ms. Matias and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, while Ms. Matias was busy completing her assigned tasks, she would receive calls from her supervisor requesting she give him her employee PIN code so he could clock out Ms. Matias for her meal periods in order to make them appear compliant. As another example, while other aggrieved employees were too busy with their workloads to take a compliant meal period, their supervisors would tell them not to worry about accruing a meal period penalty because they would adjust other aggrieved employees' meal period punch times to make them appear compliant.

Furthermore, HSS's company-wide timekeeping system prevented Ms. Matias and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Matias and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, HSS did not record all hours worked during meal periods and Ms. Matias and other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Matias and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Matias and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Matias and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, HSS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, HSS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration. However, in violation of the California Labor Code, HSS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, HSS failed to pay all overtime wages by paying a lower overtime rate than required.

HSS's failure to pay Ms. Matias and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Matias and other aggrieved employees were required to perform work off-the-clock, including, but not limited to, completing work-related tasks, waiting to clock in, and submitting to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on the work premises during meal periods, requiring employees to carry and use their company-issued radio during unpaid meal periods, and/or resultant lack of meal period coverage, Ms. Matias and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, as stated, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Matias's and/or other aggrieved employees' times records and/or pressured Ms. Matias and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Matias and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Matias and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime

premium payment, HSS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, HSS regularly failed to pay at least minimum wages to Ms. Matias and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

First, as stated, HSS had, and continues to have, company-wide policies and/or practices of understaffing, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Matias and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Matias and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Matias and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Matias was required to take her meal periods late in order to meet guest check-in timeframes and to keep up with HSS's productivity expectations. As another example, Ms. Matias had her meal periods interrupted or cut short by supervisors discussing the status of assigned guest rooms.

Specifically, according to Ms. Matias's time records, on June 23, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at the end of her shift at 4:01 p.m., working a total of six (6) hours and five (5) minutes (or 6.08 hours) without clocking out for a meal period; on June 3, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at the end of her shift at 4:01 p.m., working a total of six (6) hours and five (5) minutes (or 6.08 hours) without clocking out for a meal period; on May 25, 2022, she clocked in at the start of her shift at 8:58 a.m. and clocked out at the end of her shift at 2:58 p.m., working a total of six (6) hours (or 6.00 hours) without clocking out for a meal period; on May 19, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at

the end of her shift at 3:55 p.m., working a total of five (5) hours and 59 minutes (or 5.98 hours) without clocking out for a meal period; on May 21, 2022, she clocked in at the start of her shift at 9:57 a.m. and clocked out at the end of her shift at 4:00 p.m., working a total of six (6) hours and three (3) minutes (or 6.05 hours) without clocking out for a meal period; on April 27, 2022, she clocked in at the start of her shift at 9:55 a.m. and clocked out at the end of her shift at 3:46 p.m., working a total of five (5) hours and 51 minutes (or 5.85 hours) without clocking out for a meal period; on August 23, 2022, she clocked in at the start of her shift at 9:57 a.m. and clocked out at the end of her shift at 3:58 p.m., working a total of six (6) hours and one (1) minute (or 6.02 hours) without clocking out for a meal period; on April 2, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at the end of her shift at 3:58 p.m., working a total of six (6) hours and two (2) minutes (or 6.03 hours) without clocking out for a meal period; and on August 13, 2022, she clocked in at the start of her shift at 9:59 a.m. and clocked out at the end of her shift at 4:00 p.m., working a total of six (6) hours and one (1) minute (or 6.02 hours) without clocking out for a meal period. As another example, according to Ms. Matias's time records, on April 1, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out for her meal period at 3:20 p.m., working a total of five (5) hours and 24 minutes (or 5.40 hours), before she was able to take her meal period.

Second, as stated, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Matias and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Matias and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Matias and other aggrieved employees during meal periods.

Moreover, as stated above, HSS had, and continues to have, a company-wide policy and/or practice of requiring that other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, other aggrieved employees' meal periods were interrupted by HSS's management calling them to discuss work-related matters.

Third, as set forth above, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Matias's and/or other aggrieved employees' time records and/or pressured Ms. Matias and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Matias and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Fourth, HSS did not provide Ms. Matias and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Ms. Matias worked shifts in excess of ten (10) hours per day but was not provided a second 30-minute meal period. Ms. Matias and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were

entitled. Moreover, HSS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Matias and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Matias and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Matias and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, HSS knew or should have known that as a result of its policies, Ms. Matias and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Matias and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Matias and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the

employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, HSS regularly failed to authorize and permit Ms. Matias and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Matias and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HSS also failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Matias and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HSS maintained a company-wide on-premises rest period policy, which mandated that Ms. Matias and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Matias and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Matias and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Matias and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Matias would regularly have to forego their rest periods altogether due to the heavy workload and lack of rest period coverage. When Ms. Matias was able to take her rest periods, they were often interrupted because she was required to discuss the status of completing her assigned guest rooms.

HSS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Matias and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Matias and other aggrieved employees are entitled to

recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. HSS has not provided Ms. Matias and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, HSS has knowingly and intentionally provided Ms. Matias and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Matias and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because HSS did not record the time Ms. Matias and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Matias and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Matias and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Second, because HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS failed to list the correct amount of net wages in violation of section 226(a)(5). HSS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, HSS issued uniform wage statements to Ms. Matias and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an

administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, HSS systematically, and on a company-wide basis, issued wage statements to Ms. Matias and other aggrieved employees that fail to list the employing entity's name and address.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HSS willfully failed to maintain accurate payroll records for Ms. Matias and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Matias and other aggrieved employees, in violation of section 1198. Also, in light of HSS's failure to provide Ms. Matias and other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Matias and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Matias and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201.3 and 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS willfully failed to pay Ms. Matias and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, on information and belief, HSS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HSS terminated Ms. Matias on or about August 28, 2022. However, HSS did not provide her with her final paycheck until one (1) week later. Thus, HSS failed to pay Ms. Matias her final wages immediately, in violation of Labor Code section 201 and/or 201.3.

Additionally, HSS willfully failed to pay Ms. Matias and other aggrieved employees who are no longer employed by HSS the earned and unpaid wages set forth above, including but not limited to,

overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving HSS's employ.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, HSS unlawfully deducted a portion of wages previously paid to Ms. Matias and other aggrieved employees in violation of California Labor Code section 221. On information and belief, HSS systematically, and on a company-wide basis, provided Ms. Matias and other aggrieved employees with payroll debit cards as payment of their wages. Under HSS's payroll debit card program, Ms. Matias and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, Ms. Matias was required to pay out-of-network ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to obtain and/or spend her earned and due wages. The fees charged to Ms. Matias and other aggrieved employees resulted in a discount of their wages.

HSS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Ms. Matias's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, HSS willfully and systematically issued payroll debit cards to Ms. Matias and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. HSS's payroll debit card program resulted in the payment of less than statutorily required wages to Ms. Matias and other aggrieved employees. In doing so, HSS acted with the intent to deprive Ms. Matias and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, HSS paid Ms. Matias and other aggrieved employees lower wages than those they were entitled to while purporting that Ms. Matias and other aggrieved employees were properly paid.

HSS's failure to pay Ms. Matias and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Ms. Matias and

other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HSS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because HSS failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

HSS had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, on occasions when other aggrieved employees reported to work for their scheduled shifts, HSS's management sent other aggrieved employees home before they had worked at least half of their scheduled shift because business was slow, but other aggrieved employees were only paid for the time they had worked. Although other aggrieved employees would report to work based on the schedule that HSS provided to them, HSS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools

or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, HSS, on a company-wide basis, required that Ms. Matias and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. Specifically, Ms. Matias used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned guest suites and other work-related tasks, and was further required to watch training videos on proper cleaning techniques on her personal cellular phone. Although HSS required Ms. Matias and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for this cost.

HSS could have provided Ms. Matias and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, HSS could have reimbursed employees for the costs of their mobile device usage. Instead, HSS passed these operating costs off onto Ms. Matias and other aggrieved employees. At all relevant times, Ms. Matias did not earn at least two (2) times the minimum wage.

Thus, HSS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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

HSS failed to provide Ms. Matias and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). HSS’s failure to provide Ms. Matias and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Matias seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Matias, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Matias seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Anthony Castillo
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(310) 556-4811

Best Regards,


Anthony Castillo

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

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A. Signature

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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If YES, enter delivery address below: ☐ No

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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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2. Article Number (Transfer from service label)
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PS Form 3811, July 2020 PSN 7530-02-000-9053

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Date _____

HOSPITALITY STAFFING
SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2405 7828

KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056



9590 9402 7690 2122 7175 01

2 Article Number (Transfer from service label)

7022 2410 0000 2405 7828

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

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If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
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KELLERMEYER BERGENSONS
SERVICES, LLC

3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

EXHIBIT “2”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 30, 2023

VIA ONLINE SUBMISSION

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

Subject: *Carmen Chavez Fernandez v. Hospitality Staffing Solutions, LLC, et al.*

Dear PAGA Administrator:

This office represents Carmen Chavez Fernandez in connection with her claims under the California Labor Code. Ms. Chavez Fernandez was an employee of HOSPITALITY STAFFING SOLUTIONS, LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purposes of this letter, Ms. Chavez Fernandez collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Chavez Fernandez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Chavez Fernandez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

HSS employed Ms. Chavez Fernandez as an hourly paid, non-exempt employee from approximately December 2018 to August 2022. Ms. Chavez Fernandez worked as a Housekeeper at HSS's jobsite located in Aptos, California. Ms. Chavez Fernandez typically worked eight (8) hours per day or more, and five (5) days per week or more. At the time Ms. Chavez Fernandez's employment ended with HSS, she was compensated approximately \$20.00 per hour. Her primary job duties included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

HSS committed one or more of the following Labor Code violations against Ms. Chavez Fernandez, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

HSS’s Company-Wide and Uniform Payroll and HR Practices

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Chavez Fernandez and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Chavez Fernandez and other aggrieved employees, regardless of their location or position.

Upon information and belief, HSS maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for HSS in California, including Ms. Chavez Fernandez and other aggrieved employees. Further, HSS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Chavez Fernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HSS utilized the same methods and formulas when calculating wages due to Ms. Chavez Fernandez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

HSS willfully failed to pay all overtime wages owed to Ms. Chavez Fernandez and other aggrieved employees. During the relevant time period, Ms. Chavez Fernandez and other aggrieved employees

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

were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, HSS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Chavez Fernandez and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads (*see infra*), led Ms. Chavez Fernandez and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

For example, Ms. Chavez Fernandez was required to arrive 5-10 minutes prior to her scheduled shift-start times and begin working—preparing her cleaning caddy bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet HSS's expectations of completing daily tasks within her scheduled shift hours. For the same reasons, Ms. Chavez Fernandez and other aggrieved employees were required to continue working 10-15 minutes after their scheduled shift end-times, completing tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and returning their cleaning caddy bags to the housekeeping storage area, before they could leave for the day. When this occurred, Ms. Chavez Fernandez and other aggrieved employees were unable to record this off-the-clock work because HSS's management prohibited them from recording these overtime hours and did not provide them a means to account for this time. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to Ms. Chavez Fernandez and other aggrieved employees.

Second, during the relevant time period, HSS only provided Ms. Chavez Fernandez and other aggrieved employees with a single timekeeping machine at its clients' facilities to clock in for a shift, thus exacerbating the amount of time Ms. Chavez Fernandez and other aggrieved employees waited in line off-the-clock and under HSS's control, time for which they were paid. For example, Ms. Chavez Fernandez and other aggrieved employees would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-30 housekeeping employees and wait at least several minutes to clock in. Moreover, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Chavez Fernandez and other aggrieved employees undergo mandatory COVID-19 temperature checks. Prior to their shifts, Ms. Chavez Fernandez and other aggrieved employees were required to spend time undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these temperature checks, HSS did not provide Ms. Chavez Fernandez and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks.

Third, as stated, HSS had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Ms. Chavez Fernandez and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Chavez Fernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. In addition, HSS also had a practice of failing to schedule meal periods, which further caused Ms. Chavez Fernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Chavez Fernandez's meal periods were interrupted because they would be required to answer questions from their supervisor regarding the

status of completing assigned guest rooms or to inform them that a guest had arrived early to the hotel and was ready to check in for their room. Similarly, other aggrieved employees were required to work through their meal periods in order to complete their assigned duties. Thus, Ms. Chavez Fernandez and other aggrieved employees worked through their meal periods and/or had meal periods interrupted or cut short in order to complete their assigned workloads. HSS did not pay Ms. Chavez Fernandez and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Chavez Fernandez and other aggrieved employees remain on HSS's premises during their unpaid meal periods. Because Ms. Chavez Fernandez and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Ms. Chavez Fernandez and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, HSS effectively maintained control over Ms. Chavez Fernandez and other aggrieved employees during their unpaid meal periods.

Moreover, on information and belief, HSS had a company-wide practice and/or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, HSS's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. HSS knew or should have known that other aggrieved employees were performing work while off-the-clock in order to meet HSS's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS falsified and/or adjusted Ms. Chavez Fernandez's and/or other aggrieved employees' time records and/or pressured Ms. Chavez Fernandez and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, while Ms. Chavez Fernandez was too busy with her workload to take a compliant meal period, her supervisor would tell her not to worry about accruing a meal period penalty because she would adjust Ms. Chavez Fernandez's meal period punch times to make them appear compliant. As another example, while other aggrieved employees were busy completing their assigned tasks, they would receive calls from their supervisors requesting they give them their employee PIN code so they could clock out other aggrieved employees for their meal periods in order to make them appear compliant.

Furthermore, HSS's company-wide timekeeping system prevented Ms. Chavez Fernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Chavez Fernandez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, HSS did not record all hours worked during meal periods and Ms. Chavez Fernandez and other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Chavez Fernandez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Chavez Fernandez and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-

the-clock work qualified for overtime premium pay. Therefore, Ms. Chavez Fernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, HSS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, HSS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, HSS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, HSS failed to pay all overtime wages by paying a lower overtime rate than required.

HSS's failure to pay Ms. Chavez Fernandez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Chavez Fernandez and other aggrieved employees were required to perform work off-the-clock, including, but not limited to, completing work-related tasks, waiting to clock in, and submitting to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on the work premises during meal periods, requiring employees to carry and use their company-issued radio during unpaid meal periods, and/or resultant lack of meal period coverage, Ms. Chavez Fernandez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, as stated, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Chavez Fernandez's and/or other aggrieved employees' times records and/or pressured Ms. Chavez Fernandez and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically

failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Chavez Fernandez and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, HSS systematically failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Chavez Fernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HSS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, HSS regularly failed to pay at least minimum wages to Ms. Chavez Fernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

First, as stated, HSS had, and continues to have, company-wide policies and/or practices of understaffing, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Chavez Fernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Chavez Fernandez and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Chavez Fernandez and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Chavez Fernandez was required to take her meal periods late in order to meet guest check-in timeframes and to keep up with HSS's productivity expectations. As another example, Ms. Chavez Fernandez had her meal periods interrupted or cut short by supervisors discussing the status of assigned guest rooms.

Second, as stated, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Chavez Fernandez and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Chavez Fernandez and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Chavez Fernandez and other aggrieved employees during meal periods.

Moreover, as stated above, HSS had, and continues to have, a company-wide policy and/or practice of requiring that other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, other aggrieved employees' meal periods were interrupted by HSS's management calling them to discuss work-related matters.

Third, as set forth above, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Chavez Fernandez's and/or other aggrieved employees' time records and/or pressured Ms. Chavez Fernandez and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Chavez Fernandez and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Fourth, HSS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours per day were not provided a second 30-minute meal period. Ms. Chavez Fernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, HSS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Chavez Fernandez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written

agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Chavez Fernandez and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Chavez Fernandez and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, HSS knew or should have known that as a result of its policies, Ms. Chavez Fernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Chavez Fernandez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Chavez Fernandez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, HSS regularly failed to authorize and permit Ms. Chavez Fernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Chavez Fernandez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HSS also failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Chavez Fernandez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HSS maintained a company-wide on-premises rest period policy, which mandated that Ms. Chavez Fernandez and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Chavez Fernandez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Chavez Fernandez and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Chavez Fernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Chavez Fernandez would regularly have to forego her rest periods altogether due to the heavy workload and lack of rest period coverage. When Ms. Chavez Fernandez was able to take their rest periods, they were often interrupted because she was required to discuss the status of completing her assigned guest rooms.

HSS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Chavez Fernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay Ms. Chavez Fernandez and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay Ms. Chavez Fernandez and other aggrieved employees at the correct rate of pay for premiums because HSS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. HSS has not provided Ms. Chavez Fernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the

amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, HSS has knowingly and intentionally provided Ms. Chavez Fernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Chavez Fernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because HSS did not record the time Ms. Chavez Fernandez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Chavez Fernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Chavez Fernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Second, because HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS failed to list the correct amount of net wages in violation of section 226(a)(5). HSS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, HSS issued uniform wage statements to Ms. Chavez Fernandez and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, HSS systematically, and on a company-wide basis, issued wage statements to Ms. Chavez Fernandez and other aggrieved employees that fail to list the employing entity's name and address.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which

employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HSS willfully failed to maintain accurate payroll records for Ms. Chavez Fernandez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Chavez Fernandez and other aggrieved employees, in violation of section 1198. Also, in light of HSS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Chavez Fernandez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Chavez Fernandez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201.3 and 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS willfully failed to pay Ms. Chavez Fernandez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, on information and belief, HSS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HSS terminated Ms. Chavez Fernandez on or about August 28, 2022. However, HSS did not provide her with her final paycheck until one (1) week later. Thus, HSS failed to pay Ms. Chavez Fernandez her final wages immediately, in violation of Labor Code section 201 and/or 201.3.

Additionally, HSS willfully failed to pay Ms. Chavez Fernandez and other aggrieved employees who are no longer employed by HSS the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving HSS's employ.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, HSS unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, HSS systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under HSS's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay out-of-network ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

HSS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, HSS willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. HSS's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, HSS acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, HSS paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

HSS's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The

“primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HSS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because HSS failed to pay Ms. Chavez Fernandez and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

HSS had a company-wide practice of sending Ms. Chavez Fernandez and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, HSS’s managers sent Ms. Chavez Fernandez home within one (1) hour from the start of her shift because business was slow, but she was only paid for the time she had worked. Although Ms. Chavez Fernandez and other aggrieved employees would report to work based on the schedule that HSS provided to them, HSS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Chavez Fernandez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, HSS, on a company-wide basis, required that Ms. Chavez Fernandez and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. Specifically, Ms. Chavez Fernandez used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned guest suites and other work-related tasks, and was further required to watch training videos on proper cleaning techniques on her personal cellular phone. Although HSS required Ms. Chavez Fernandez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for this cost.

HSS could have provided Ms. Chavez Fernandez and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, HSS could have reimbursed

employees for the costs of their mobile device usage. Instead, HSS passed these operating costs off onto Ms. Chavez Fernandez and other aggrieved employees. At all relevant times, Ms. Chavez Fernandez did not earn at least two (2) times the minimum wage.

Thus, HSS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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

HSS failed to provide Ms. Chavez Fernandez and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). HSS's failure to provide Ms. Chavez Fernandez and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Chavez Fernandez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Chavez Fernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Chavez Fernandez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067

CERTIFIED MAIL



7022 2410 0000 2405 7842

HOSPITALITY STAFFING
SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

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SOLUTIONS, LLC
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STE 400
ATLANTA, GA 30342



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☐ Agent
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D. Is delivery address different from item 1? ☐ Yes
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1. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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STE 400
ATLANTA, GA 30342

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2405 7859

KELLERMAYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

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KELLERMAYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

9590 9402 7690 2122 7157 81



2. Article Number (Transfer from service label)
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B. Received by (Printed Name)

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D. Is delivery address different from item 1? ☐ Yes
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1. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
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Charles E. Bergenson, LLC

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2. Signature of Addressee (Printed Name)

445
Postmark

KELLERMAYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

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**KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056**



9590 9402 7690 2122 7157 81

2. Article Number (Transfer from service label)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

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B. Received by (Printed Name)

☐ Agent

☐ Addressee

C. Date of Delivery

4-1-23

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3. Service Type

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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery

(over \$500)

Domestic Return Receipt

EXHIBIT “3”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 30, 2023

VIA ONLINE SUBMISSION

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

Subject: *Yolanda Membreno de Ayala v. Hospitality Staffing Solutions, LLC, et al.*

Dear PAGA Administrator:

This office represents Yolanda Membreno de Ayala in connection with her claims under the California Labor Code. Ms. Membreno de Ayala was an employee of HOSPITALITY STAFFING SOLUTIONS, LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purposes of this letter, Ms. Membreno de Ayala collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Membreno de Ayala intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Membreno de Ayala seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

HSS employed Ms. Membreno de Ayala as an hourly paid, non-exempt employee from approximately June 2019 to August 2022. Ms. Membreno de Ayala worked as a Housekeeper at HSS's jobsite located in Aptos, California. Ms. Membreno de Ayala typically worked eight (8) hours per day or more, and five (5) days per week or more. At the time Ms. Membreno de Ayala's employment ended with HSS, she was compensated approximately \$20.00 per hour. Her primary job duties included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

HSS committed one or more of the following Labor Code violations against Ms. Membreno de Ayala, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

HSS’s Company-Wide and Uniform Payroll and HR Practices

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Membreno de Ayala and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Membreno de Ayala and other aggrieved employees, regardless of their location or position.

Upon information and belief, HSS maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for HSS in California, including Ms. Membreno de Ayala and other aggrieved employees. Further, HSS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Membreno de Ayala and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HSS utilized the same methods and formulas when calculating wages due to Ms. Membreno de Ayala and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

HSS willfully failed to pay all overtime wages owed to Ms. Membreno de Ayala and other aggrieved employees. During the relevant time period, Ms. Membreno de Ayala and other aggrieved

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

employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, HSS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Membreno de Ayala and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads (*see infra*), led other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, other aggrieved employees were required to arrive prior to their scheduled shift-start times and begin working—preparing their cleaning caddy bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet HSS's expectations of completing daily tasks within their scheduled shift hours. For the same reasons, other aggrieved employees were required to continue working after their scheduled shift end-times, completing tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and returning their cleaning caddy bags to the housekeeping storage area, before they could leave for the day. When this occurred, other aggrieved employees were unable to record this off-the-clock work because HSS's management prohibited them from recording these overtime hours and did not provide them a means to account for this time. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to other aggrieved employees.

Second, during the relevant time period, HSS only provided Ms. Membreno de Ayala and other aggrieved employees with a single timekeeping machine at its clients' facilities to clock in for a shift, thus exacerbating the amount of time Ms. Membreno de Ayala and other aggrieved employees waited in line off-the-clock and under HSS's control, time for which they were paid. For example, Ms. Membreno de Ayala and other aggrieved employees would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-30 housekeeping employees and wait at least several minutes to clock in. Moreover, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Membreno de Ayala and other aggrieved employees undergo mandatory COVID-19 temperature checks. Prior to their shifts, Ms. Membreno de Ayala and other aggrieved employees were required to spend time undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these temperature checks, HSS did not provide Ms. Membreno de Ayala and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks.

Third, as stated, HSS had, and continue to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Ms. Membreno de Ayala and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. In addition, HSS also had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, other aggrieved employees' meal periods were interrupted because they would be required to answer questions from their supervisor regarding the status of completing assigned guest rooms or to inform them that a guest had arrived early to the hotel and was ready to check in for their room. Similarly, other aggrieved employees were required to work through their meal periods in order to complete their assigned duties. Thus, other aggrieved employees worked through their meal periods and/or

had meal periods interrupted or cut short in order to complete their assigned workloads. HSS did not pay other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Membreno de Ayala and other aggrieved employees remain on HSS's premises during their unpaid meal periods. Because Ms. Membreno de Ayala and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Ms. Membreno de Ayala and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, HSS effectively maintained control over Ms. Membreno de Ayala and other aggrieved employees during their unpaid meal periods.

Moreover, on information and belief, HSS had a company-wide practice and/or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, HSS's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. HSS knew or should have known that other aggrieved employees were performing work while off-the-clock in order to meet HSS's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS falsified and/or adjusted other aggrieved employees' time records and/or pressured other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, while other aggrieved employees were too busy with their workloads to take a compliant meal period, their supervisors would tell them not to worry about accruing a meal period penalty because they would adjust other aggrieved employees' meal period punch times and/or use other aggrieved employees' employee PIN codes to clock out for meal periods, in order to make them appear compliant.

Furthermore, HSS's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, HSS did not record all hours worked during meal periods and other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Membreno de Ayala and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Membreno de Ayala and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Membreno de Ayala and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, HSS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, HSS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, HSS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, HSS failed to pay all overtime wages by paying a lower overtime rate than required.

HSS's failure to pay Ms. Membreno de Ayala and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Membreno de Ayala and/or other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Membreno de Ayala and other aggrieved employees were required to perform work off-the-clock, including, but not limited to, completing work-related tasks, waiting to clock in, and/or submitting to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on the work premises during meal periods, requiring employees to carry and use their company-issued radio during unpaid meal periods, and/or resultant lack of meal period coverage, Ms. Membreno de Ayala and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, as stated, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted other aggrieved employees' times records and/or pressured other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, HSS systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Membreno de Ayala and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HSS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, HSS regularly failed to pay at least minimum wages to Ms. Membreno de Ayala and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

First, as stated, HSS had, and continues to have, company-wide policies and/or practices of understaffing, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Membreno de Ayala and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Membreno de Ayala and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Membreno de Ayala and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately twice per week, Ms. Membreno de Ayala was required to take her meal periods late in order to meet guest check-in timeframes and to keep up with HSS's productivity expectations. As another example, as stated above, other aggrieved employees had their meal periods interrupted or cut short by supervisors discussing the status of assigned guest rooms.

Second, as stated, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Membreno de Ayala and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Membreno de Ayala and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Membreno de Ayala and other aggrieved employees during meal periods.

Moreover, as stated above, HSS had, and continues to have, a company-wide policy and/or practice of requiring that other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, other aggrieved employees' meal periods were interrupted by HSS's management calling them to discuss work-related matters.

Third, as set forth above, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Membreno de Ayala's and/or other aggrieved employees' time records and/or pressured Ms. Membreno de Ayala and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Membreno de Ayala and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Fourth, HSS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours per day were was not provided a second 30-minute meal period. Ms. Membreno de Ayala and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, HSS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Membreno de Ayala and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Membreno de Ayala and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Membreno de Ayala and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, HSS knew or should have known that as a result of its policies, Ms. Membreno de Ayala and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Membreno de Ayala and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Membreno de Ayala and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, HSS regularly failed to authorize and permit Ms. Membreno de Ayala and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Membreno de Ayala and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HSS also failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Membreno de Ayala and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HSS maintained a company-wide on-premises rest period policy, which mandated that Ms. Membreno de Ayala and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Membreno de Ayala and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Membreno de Ayala and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Membreno de Ayala and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Membreno de Ayala would have to forego their rest periods altogether approximately twice per week due to the heavy workload and lack of rest period coverage. When Ms. Membreno de Ayala was able to take her rest periods, they were often interrupted because she was required to discuss the status of completing her assigned guest rooms.

HSS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Membreno de Ayala and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. HSS has not provided Ms. Membreno de Ayala and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, HSS has knowingly and intentionally provided Ms. Membreno de Ayala and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Membreno de Ayala and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the

name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because HSS did not record the time Ms. Membreno de Ayala and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Membreno de Ayala and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Membreno de Ayala and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Second, because HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS failed to list the correct amount of net wages in violation of section 226(a)(5). HSS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, HSS issued uniform wage statements to Ms. Membreno de Ayala and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, HSS systematically, and on a company-wide basis, issued wage statements to Ms. Membreno de Ayala and other aggrieved employees that fail to list the employing entity's name and address.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HSS willfully failed to maintain accurate payroll records for Ms. Membreno de Ayala and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Membreno de Ayala and other aggrieved employees, in violation of section 1198. Also, in light of HSS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Membreno de Ayala and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Membreno de Ayala and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201.3 and 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS willfully failed to pay Ms. Membreno de Ayala and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages,

meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, on information and belief, HSS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HSS terminated Ms. Membreno de Ayala on or about August 28, 2022. However, HSS did not provide her with her final paycheck until one (1) week later. Thus, HSS failed to pay Ms. Membreno de Ayala her final wages immediately, in violation of Labor Code section 201 and/or 201.3.

Additionally, HSS willfully failed to pay Ms. Membreno de Ayala and other aggrieved employees who are no longer employed by HSS the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving HSS's employ.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, HSS unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, HSS systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under HSS's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay out-of-network ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

HSS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, HSS willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. HSS's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, HSS acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, HSS paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

HSS's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HSS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because HSS failed to pay Ms. Membreno de Ayala and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

HSS had a company-wide practice of sending Ms. Membreno de Ayala and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, HSS's managers sent Ms. Membreno de Ayala home within three (3) hours from the start of her shift because business was slow, but she was only paid for the time she had worked. Although Ms. Membreno de Ayala and other aggrieved employees would report to work based on the schedule that HSS provided to them, HSS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Membreno de Ayala and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, HSS, on a company-wide basis, required that Ms. Membreno de Ayala and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. Specifically, Ms. Membreno de Ayala used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned guest suites and other work-related tasks, and was further required to watch training videos on proper cleaning techniques on her personal cellular phone. Although HSS required Ms. Membreno de Ayala and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for this cost.

HSS could have provided Ms. Membreno de Ayala and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, HSS could have reimbursed employees for the costs of their mobile device usage. Instead, HSS passed these operating costs off onto Ms. Membreno de Ayala and other aggrieved employees. At all relevant times, Ms. Membreno de Ayala did not earn at least two (2) times the minimum wage.

Thus, HSS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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

HSS failed to provide Ms. Membreno de Ayala and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). HSS's failure to provide Ms. Membreno de Ayala and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Membreno de Ayala seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Membreno de Ayala, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Membreno de Ayala seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067

CERTIFIED MAIL



7022 2410 0000 2405 7873

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SOLUTIONS, LLC
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STE 400
ATLANTA, GA 30342

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SOLUTIONS, LLC
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Capstone Law, APC
1875 Century Park, East, 1000
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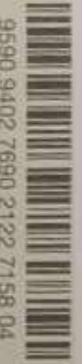
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KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

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KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056



9590 9402 7690 2122 7158 04

2. Article Number (Transfer from service label)

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **June 5, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Shareef S. Farag (SBN: 251650)
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Attorneys for Defendants
HOSPITALITY STAFFING SOLUTIONS,
LLC, and KELLERMEYER BERGENSONS
SERVICES, LLC

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 5, 2023**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name

Signature

