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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

FABIAN GONZALEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SEVEN SEAS ASSOCIATES, LLC, a California
Limited Liability Company; and DOES 1 to 100,

Defendants.

Case No.: 37-2023-00042280-CU-OE-CTL

Judge: Loren G. Freestone

CLASS ACTION

FIRST AMENDED COMPLAINT

- 1. Violation of B&PC §17200, et seq.**
- 2. Violation of Labor Code §§ 204, 510, 1194, and 1198**
- 3. Inaccurate Wage Statements (LC §226)**
- 4. Failure to Provide Meal Periods**
- 5. Failure to Provide Rest Periods**
- 6. Work Expenditure Reimbursements**
- 7. Waiting Time Penalties**
- 8. Penalties Under PAGA Labor Code §2698, et seq.**

Action filed: September 27, 2023

1 Plaintiff, Fabian Gonzalez on behalf of himself and all others similarly situated and the
2 general public, hereby complains against SEVEN SEAS ASSOCIATES, LLC (hereinafter
3 collectively referred to as “Defendant” or “SEVEN SEAS”), and DOES 1 to 100, as follows:

4 **GENERAL ALLEGATIONS**

5 **JURISDICTION**

6 1. This is a civil action seeking recovery of unpaid wages under California Labor
7 Code §§ 226, 226.7, 510, 512, 558, 1194, 1197.1, 2698, 2699, and 2802. The Plaintiff for
8 himself and on behalf of the general public, and all others similarly situated, brings an action for
9 monetary damages for failure to pay wages as well as for injunctive relief, declaratory relief and
10 restitution for Defendant’s violations of Business and Professions Code (B&PC) §17200, et seq.,
11 including full restitution of all compensation retained by Defendant, as a result of its unlawful,
12 fraudulent and unfair business practices. Plaintiff seeks all available relief, including full
13 damages, full restitution and/or disgorgement of all revenues, earnings, profits, compensation
14 and benefits retained by Defendant as a result of its unlawful, unfair business practices.

15 **VENUE**

16 2. Venue as to the Defendant is proper in San Diego County pursuant to California
17 Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of
18 herein occurred in the County of San Diego. Defendant either owns or maintain offices,
19 transacts business, has an agent or agents within the County of San Diego, or otherwise is found
20 within the County of San Diego, and Defendant is within the jurisdiction of this Court for
21 purposes of service of process.

22 **PARTIES**

23 3. Fabian Gonzalez is an individual over the age of eighteen (18). At all relevant
24 times herein, Plaintiff Gonzalez was and currently is a resident of the County of San Diego, State
25 of California.

26 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
27 herein, Defendant Seven Seas Associates, LLC is a California Limited Liability Company based
28 in San Diego, California.

1 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, Defendant and each of them listed herein is a hotel licensed to do business in California.

3 6. Plaintiffs are informed and believe and thereon allege that at all relevant times
4 each Defendant was licensed to do business in the State of California, County of San Diego with
5 its principal place of business in San Diego, California.

6 7. Further, Defendant is and was the employer of the Plaintiff and Plaintiff Class
7 during the Class Period. During the liability period, Defendant employed Plaintiff and similarly
8 situated non-exempt hourly employees and due to Defendant's uniform payroll practices, failed
9 to pay Plaintiff and Plaintiff Class for all time worked due to requiring Plaintiff and Plaintiff
10 class members to work off the clock, failed to pay Plaintiff and Plaintiff Class at least minimum
11 wage, and failed to pay Plaintiff and Plaintiff class premiums for missed rest and meal periods at
12 the regular rate of pay, failed to provide duty-free off-premises meal and rest breaks, failed to
13 reimburse Plaintiff and Plaintiff Class for necessary business expenditures, and failed to provide
14 accurate wage statements. On information and belief and based thereon, Plaintiff alleges that
15 Defendant is conducting business in good standing in California.

16 8. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1
17 to 100, control and operate business and establishments in locations within the State of
18 California, including, but not limited to, the County of San Diego. Thus, each named Defendant
19 and DOES 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the
20 Labor Code as hereinafter alleged.

21 9. Plaintiff does not know the true names or capacities, whether individual, partner,
22 or corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said
23 Defendant is sued under such fictitious names, and Plaintiff will seek from this Court leave to
24 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
25 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
26 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
27 herein, and proximately caused Plaintiff and all others similarly situated hereinafter alleged and
28

1 the general public to be subjected to the unlawful employment practices, wrongs, injuries and
2 damages complained of herein.

3 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

4 10. Plaintiff on behalf of himself and all others similarly situated, filed this cause of
5 action acting as a private attorney general on behalf of the general public to challenge and
6 remedy the business practices of Defendant alleged herein.

7 11. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
8 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
9 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
10 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
11 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
12 authorized to order injunctive relief, declaratory relief, and restitution to affected members of the
13 general public as remedies for any violations of B&PC §17200.

14 12. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this
15 action as a private attorney general against Defendant under CCP §1021.5 based in part on the
16 following:

17 a. A successful outcome in this action will result in the enforcement of
18 important rights affecting the public interest by maintaining the integrity of entities that employ
19 employees;

20 b. This action will result in a significant benefit to the general public by
21 ceasing unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains
22 obtained by Defendant through their failure to properly pay their employees;

23 c. Unless this action is prosecuted, members of the general public will not
24 recover monies wrongfully taken from them, and many employees and consumers would not be
25 aware that they were victimized by Defendant's wrongful acts and practices; and unless
26 attorneys' fees and costs are awarded against Defendant, the general public will not be made
27 whole.

28 /////

1 **CLASS REPRESENTATIVE**

2 13. The class representative Plaintiff who worked in the position of non-exempt
3 hourly employee, while employed by Defendant within the State of California, is Fabian
4 Gonzalez.

5 **CLASS ACTION ALLEGATIONS**

6 14. Plaintiff bring this action on behalf of himself and all others similarly situated as a
7 class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed
8 of and defined as follows:

9 **Class Definition:**

10 All non-exempt hourly employees who worked for Defendant in California at least one
11 (1) day at any time from four (4) years preceding the filing of this Complaint through the date of
12 the class certification order.

13 **Class 1:**

14 All non-exempt employees who worked for Defendant as hourly employees in California
15 from four years prior to the filing this action to the date of certification or judgment, whichever is
16 earlier, and who were not paid premium overtime pay for hours over eight (8) in a day at the
17 correct regular rate of pay. ("Overtime/ Regular Rate Class").

18 **Class 2:**

19 All non-exempt hourly California employees who worked for Defendant from four years
20 from the date of filing through certification who were not provided a 30-minute uninterrupted
21 meal period within the first five hours of their shift. (Meal Break Class)

22 **Subclass 1:**

23 All current and former hourly non-exempt California employees who work or worked for
24 Defendants at any time from four years from the date of filing through certification who were
25 required to remain on-premises for their meal breaks. (On-Premises Meal Break Subclass).

26 **Class 3:**

27 All current and former hourly non-exempt California employees who work or worked for
28 Defendant at any time from four years from the date of filing through class certification, who

1 were not authorized or permitted to take a duty-free rest period of at least ten (10) consecutive
2 minutes for each four (4) hours or major fraction thereof pursuant to California law. (Rest Period
3 Class)

4 **Subclass 2:**

5 All current and former hourly non-exempt California employees who work or worked for
6 Defendants at any time from four years from the date of filing through certification who were
7 required to remain on-premises for their rest breaks. (On-Premises Rest Period Subclass).

8 **Class 4:**

9 All current and former hourly non-exempt California employees who work or worked for
10 Defendant at any time from four years from the date of filing through preliminary approval or
11 judgment who were not reimbursed for out-of-pocket costs paid for necessary work expenses.
12 (2802 Class)

13 **Class 5:**

14 All non-exempt hourly California employees who worked for Defendants from one year
15 from the date of filing of this action through certification who were provided a paystub (wage
16 statement) from Defendants. (Pay Stub Class)

17 **Class 6:**

18 All hourly non-exempt California employees who worked for Defendants at some point
19 from three years from the date of filing of this action through the date of certification who are no
20 longer employed with Defendant. (Waiting Time Penalty Class)

21 **Class 7:**

22 All current and former hourly non-exempt California employees who work or worked for
23 Defendants at any time from four years from the date of filing through certification who were
24 required to work off the clock. (minimum wage / off the clock class)

25 The members of the classes are so numerous that joinder of all members would be
26 unfeasible and not practicable. The membership of the classes is unknown to Plaintiffs at this
27 time; however, it is estimated that the classes number greater than 50 individuals. The identity of
28 such membership is readily ascertainable via inspection of Defendant's employment records.

1 15. There are common questions of law and fact as to Plaintiff and all others similarly
2 situated which predominate over questions affecting only individual members including, without
3 limitation to:

- 4 i. Whether Defendant improperly calculated the regular rate of pay for
5 payment of premium pay and overtime;
- 6 ii. Whether Defendant required Plaintiff and Plaintiff Class to work off-the-
7 clock;
- 8 ii. Whether Defendant violated the applicable Labor Code provisions
9 including §§ 510, 1194, and 203 by requiring substantial overtime work
10 and not paying for said work according to the overtime laws of the State of
11 California, without statutory exemptions;
- 12 iii. Whether Defendant failed to pay overtime premium or meal and rest
13 period premiums to the class based on the correct regular rate of pay;
- 14 iv. Whether Defendant improperly retained, appropriated or deprived Plaintiff
15 of the use of monies or sums to which Plaintiff was legally entitled;
- 16 v. Whether Defendant engaged in unfair business practices;
- 17 vi. Whether Defendant, and each of them, was/were participants in the
18 alleged unlawful conduct;
- 19 vii. Whether Defendant's conduct was willful or reckless;
- 20 viii. The effect upon and the extent of injuries suffered by Plaintiff and all
21 others similarly situated and the appropriate amount of compensation;
- 22 ix. The appropriate amount of monetary penalties allowed by Labor Code
23 §201, et. seq.;
- 24 x. Whether Defendant discouraged, dissuaded, or impeded non-exempt
25 employees from receiving legally compliant meal periods;
- 26 xi. Whether Defendant violated Labor Code §226 and by failing to
27 accurately report total hours worked at all applicable hourly rates by
28 Plaintiff and the members of the class;

xii. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiff and members of the class as required by Labor Code § 1174 and IWC Order, 5-2001.

16. Plaintiff's claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiff, as representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claims or interests that are antagonistic to any class member.

17. The nature of this action and the nature of laws available to the members of the classes identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves one large employer, Defendant, and a large number of individual employees (Plaintiff and all others similarly situated) with many relatively small claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present and/or subsequent employment. Proof of a common business practice or factual pattern, of which the named Plaintiffs experienced, is representative of the class mentioned herein and will establish the right of each of the members of the named class to recovery on the causes of action alleged herein.

18. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendant herein; and which would establish potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the

1 interest of the other class members not parties to adjudications or which would substantially
2 impair or impede the ability of the class members to protect their interests. Further, the claims of
3 the individual members of the class are not sufficiently large to warrant vigorous individual
4 prosecution considering all of the concomitant costs and expenses attending thereto.

5 19. Plaintiff and all others similarly situated are entitled to the wages and other
6 monies unlawfully withheld. This action is brought for the benefit of the public.

7 **FIRST CAUSE OF ACTION**

8 **Violation of Business & Professions Code §17200, et seq.**

9 **Against All Defendants**

10 20. Plaintiff re-alleges and incorporates by reference herein the allegations of all
11 preceding paragraphs as though fully set forth herein.

12 21. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
13 least four (4) years preceding the filing of this action, Defendant has engaged in a pattern and
14 practice of acts of unfair competition in violation of B&PC §17200.

15 22. Defendants have engaged in the practice of paying their employees, including all
16 hourly employees in a fashion that circumvents California wage laws.

17 **FAILURE TO PAY PROPER WAGES, PREMIUM PAY AND OVERTIME**

18 **COMPENSATION BASED ON THE CORRECT REGULAR RATE OF PAY**

19 23. Plaintiff is informed and believe and thereon allege that as part of Defendant's
20 ongoing unfair business practices, Defendant's non-exempt hourly employees were and are
21 employed and scheduled as a matter of established company policy to work, and in fact, worked
22 shifts in excess of eight (8) hours a day, including but not limited to shifts lasting ten (10) hours
23 and twelve (12) hours.

24 24. Defendant's policy is to pay straight time for all hours worked in excess of eight
25 (8) hours per day, both straight time (first eight (8) hours) and overtime (last four (4) hours) pay
26 is paid at the base hourly rate which is lower than required by law due to Defendant's failure to
27 pay daily overtime hours at time-and-a-half of the employees' correct regular rate of pay. The
28 mathematical result of this practice is that employees are underpaid their earned statutory

overtime premium wages. Defendant's mathematical scheme is in violation of the Labor Code. Defendant's employees are not paid proper overtime compensation at the correct rate. The "regular rate" means "the hourly rate actually paid for the normal, non-overtime workweek." (See *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the hourly rate actually paid the employee for the normal, non-overtime workweek for which he is employed.") (emphasis added); *United States v. Rosenwasser*, 323 U.S. 360, 364 (1945) (defining the "regular rate" is defined as "the hourly rate actually paid for the normal, non-overtime workweek.") (quotation omitted) (emphasis added); *Huntington Memorial Hosp. v. Superior Court*, (2005) 131 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-overtime workweek); *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 996 (9th Cir. 2017) (To determine the regular rate, "we must first determine what the parties agreed [the employee] is to be paid in a normal, non-overtime workweek.") (emphasis added).) "Wage divided by hours equals regular rate." (*Bay Ridge*, 334 U.S. at 461 (quotation omitted).) The employer may not "compute the regular rate in a wholly unrealistic and artificial manner so as to negate the statutory purposes." (*Walling*, 325 U.S. at 424.) The regular rate "must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments." (*Id.*) The regular rate "is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation" (*Id.* at 244-45.) "The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid." (29 C.F.R. § 778.109.)

25. Plaintiff believes and thereon alleges that Defendant fails to include all remuneration into the calculation of the regular rate for overtime, meal and rest period premium payments, including but not limited to, differentials, bonuses, and other pay.

VIOLATION OF MEAL PERIOD PROVISIONS

26. Defendant's improper meal policies are in violation of California law including,

1 but not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. Plaintiff and all
2 others similarly situated these classes are entitled to wages at their regular rate of pay for each
3 violation where Defendants violated the meal break provisions and failed to provide a compliant
4 meal period due to an invalid waiver and no exemption. Plaintiff and the class are entitled to 1
5 hour of pay for each meal break violation at the correct regular rate of pay.

6 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

7 27. Plaintiff and other members of the Rest Period Class are entitled to the benefits of
8 Labor Code § 226.7 and Order 5-2001 of the Industrial Welfare Commission. Pursuant to Labor
9 Code § 226.7 and Wage Order 5-2001, Plaintiff and the other members of the Rest Period Class
10 were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or
11 major fraction thereof, and one hour of additional pay for every shift a rest period was not
12 provided in conformance with this obligation.

13 28. Plaintiff is informed and believes, and thereon allege that Defendant consistently
14 compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than
15 four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3)
16 rest breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to
17 provide duty-free rest periods and off-site rest periods to Plaintiff and the class.

18 **FAILURE TO PAY FOR ALL TIME WORKED (OFF THE CLOCK)**

19 29. Plaintiff is informed and believes and thereon alleges, that at all times herein
20 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited
21 by California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered
22 or permitted Plaintiff and Plaintiff Class to work off the clock.

23 30. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and
24 the Class were required to perform work off-the-clock. Despite recording time on the clock,
25 Defendant failed to pay Plaintiff and the Class for all time worked, including but not limited to
26 straight time, overtime and standby time.

27 31. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
28 to and do seek such relief as may be necessary to restore to them the money and property which

1 Defendant has acquired, or of which Plaintiff and class members have been deprived by means
2 of the herein described unfair, unlawful, and/or fraudulent business practices.

3 32. Plaintiff, and all persons similarly situated, and all persons in interest, are further
4 entitled to and do seek a declaration that the above-described business practices are unfair,
5 unlawful, and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of
6 the herein described unfair, unlawful, and/or fraudulent business practices at all times in the
7 future.

8 33. Plaintiff seeks restitution for said violations.

9 34. Plaintiff is informed and believes and thereon alleges that at all times herein
10 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
11 prohibited by California B&PC §17200, thereby depriving their employees and the putative class
12 the minimum working condition, standards and conditions due to them under the California
13 Labor Laws and Industrial Welfare Commission wage orders as specifically described herein.
14 Plaintiff further seeks an order requiring Defendant to identify by full name, telephone number,
15 and last known address employees who worked or still work for Defendant from four (4) years
16 preceding the filing of the original Complaint through the date of judgment; Plaintiff further
17 seeks an order requiring Defendant to timely pay restitution to all current and former employees,
18 including back wages, and interest.

19 35. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
20 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

21 **SECOND CAUSE OF ACTION**

22 **RECOVERY OF UNPAID WAGES & PENALTIES**

23 **(Violation of Labor Code §§ 204, 510, 1194 and 1198)**

24 **Against All Defendants**

25 36. Plaintiff re-alleges and incorporate by reference herein the allegations of all
26 preceding paragraphs as though fully set forth herein.

27 37. Plaintiff and all others similarly situated identified herein were and are employed
28 and scheduled as a matter of established company policy to work and in fact worked as non-

1 exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40)
2 hours per pay period, including shifts that last ten (10) hours or twelve (12) hours without daily
3 overtime paid for the hours worked in excess of eight (8) in a day at the correct regular rate.
4 Labor Code § 204 establishes the fundamental right of all employees in the state of California to
5 be paid the proper amount of wages in a timely fashion for their work, including overtime.

6 38. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiff may bring a civil action for
7 overtime wages directly against the employer without first filing a claim with the Division of
8 Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with
9 interest thereon, penalties, attorneys' fees and costs.

10 39. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all
11 persons similarly situated wages when due as required by Labor Code § 204.

12 40. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
13 the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders.
14 IWC Wage Order No. 5, as amended, applies to Plaintiff.

15 41. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
16 that Defendant has treated Plaintiff and all other similarly situated hourly employees as hourly
17 non-exempt employees. Despite this classification, Defendant has willfully and wrongfully
18 underpaid overtime premiums at the regular rate in order to avoid payment of overtime wages
19 and other benefits in violation of the Labor Code and the orders issued by the IWC, thereby
20 Defendant is able to reduce its overhead and operating expenses and gain an unfair advantage
21 over competing companies complying with state law.

22 42. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
23 class was under paid premium overtime compensation at a lower rate of pay than the regular rate
24 when Defendant paid overtime. The "regular rate" means "the hourly rate actually paid for the
25 normal, non-overtime workweek." (*Id.* (emphasis added); see also *Walling v. Youngerman-*
26 *Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the hourly rate
27 actually paid the employee for the normal, non-overtime workweek for which he is employed.")
28 (emphasis added); *United States v. Rosenwasser*, 323 U.S. 360, 364 (1945) (defining the "regular

1 rate" is defined as "the hourly rate actually paid for the normal, non-overtime workweek.")
2 (quotation omitted) (emphasis added); *Huntington Memorial Hosp. v. Superior Court*, (2005)
3 131 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-overtime workweek);
4 *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 996 (9th Cir. 2017) (To determine the
5 regular rate, "we must first determine what the parties agreed [the employee] is to be paid in a
6 normal, non-overtime workweek.") (emphasis added).) "Wage divided by hours equals regular
7 rate." (*Bay Ridge*, 334 U.S. at 461 (quotation omitted).) The employer may not "compute the
8 regular rate in a wholly unrealistic and artificial manner so as to negate the statutory purposes."
9 (*Walling*, 325 U.S. at 424.) The regular rate "must reflect all payments which the parties have
10 agreed shall be received regularly during the workweek, exclusive of overtime payments." (*Id.*)
11 The regular rate "is not an arbitrary label chosen by the parties; it is an actual fact. Once the
12 parties have decided upon the amount of wages and the mode of payment the determination of
13 the regular rate becomes a matter of mathematical computation" (*Id.* at 244-45.) "The
14 regular hourly rate of pay of an employee is determined by dividing his total remuneration for
15 employment (except statutory exclusions) in any workweek by the total number of hours actually
16 worked by him in that workweek for which such compensation was paid." (29 C.F.R. §
17 778.109.)

18 43. Plaintiff is informed and believes and thereon alleges that Defendant consistently
19 administered a corporate policy regarding both staffing levels and duties and responsibilities of
20 the members of the classes which required the entirety of all classes to work overtime without
21 proper premium pay at the correct regular rate. This included a uniform corporate policy and
22 practice of allocating straight time only hourly rate for all hours worked in a day in excess of
23 eight (8) hours and for carrying out a policy that fails to pay overtime premiums. This corporate
24 policy and pattern of conduct was/is accomplished with the advance knowledge and design of all
25 Defendants herein. Thus, Plaintiff and all others similarly situated routinely, regularly and
26 customarily performed overtime work. Accordingly, Plaintiff and all others similarly situated
27 are entitled to overtime compensation under California law.

28 44. Defendant has willfully failed to pay the earned and unpaid wages of such

1 individuals, including, but not limited to premium pay at the correct rate, and other wages earned
2 and remaining uncompensated according to amendment, or proof.

3 45. Further, Plaintiff and the class members were required to work off-the-clock.
4 Specifically, Defendant required Plaintiff and Plaintiff Class to clock out and continue to finish
5 tasks off-the-clock.

6 46. The pattern, practice and uniform administration of corporate policy regarding
7 illegal employee compensation as described herein is unlawful and creates an entitlement to
8 recovery by Plaintiff and all others similarly situated, in a civil action, for the unpaid balance of
9 the full amount of the all wages owing, including the proper calculation of the regular rate,
10 including interest thereon, willful penalties, reasonable attorneys' fees, and costs of suit
11 according to the mandate of Labor Code § 1194, et. seq.

12 47. Likewise, Defendant has a pattern, practice and uniform administration of
13 corporate policy regarding failure to comply with the required provisions of Labor Code § 226.7,
14 in failing to pay Plaintiff and the class the meal and rest break violation payment at the regular
15 rate.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **PURSUANT TO LABOR CODE §226**

19 **Against All Defendants**

20 48. Plaintiff re-alleges and incorporates by reference herein the allegations of all
21 preceding paragraphs as though fully set forth herein. Labor Code section 226 provides:

22 Every employer shall semimonthly or at the time of each payment of wages
23 furnish each employee, either as a detachable part of the check, draft, or voucher
24 paying the employee's wages, or separately, an itemized statement in writing
25 showing: (1) all deductions; (2) the inclusive dates of the period for which the
26 employee is paid; (3) the name of the employee or the employee's social security
27 number; and (4) the name of the employer, provided all deductions made on
28 written orders of the employee may be aggregated and shown as one item.
Subsection (e) provides: "Any employee suffering injury as a result of a knowing
and intentional failure by an employer to comply with subdivision (a) shall be
entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
initial pay period in which a violation occurs and one hundred dollars (\$100) per

1 employee for each violation in a subsequent pay period, not exceeding an
2 aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
3 award of costs and reasonable attorney's fees."

4 49. During the Class Period, Defendants knowingly and intentionally failed to
5 provide the Class Members, including Plaintiff, with timely and accurate wage statements
6 showing gross wages earned, total hours worked, all deductions made, net wages earned, the
7 name and address of the legal entity employing that Class Member, the inclusive dates of the
8 period for which the employee is paid, and all applicable hourly rates in effect during each pay
9 period and the corresponding number of hours worked at each hourly rate by that Class Member.

10 50. Defendant thus required the Class Members, including Plaintiff, to work under
11 conditions prohibited by order of the Industrial Welfare Commission, in violation of those
12 orders.

13 51. The Class Members, including Plaintiff, suffered injury as a result of Defendant's
14 knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage
15 and hour statements required by law.

16 52. Based on Defendant's conduct as alleged herein, Defendant is liable for actual
17 damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's
18 fees and costs.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL BREAKS**

21 **Against All Defendants**

22 53. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
23 paragraphs above.

24 54. Labor Code §226.7 requires an employer to pay an additional hour of
25 compensation for each meal period the employer fails to provide. Plaintiff alleges that
26 Defendant failed to provide legally compliant meals in addition to impeding, discouraging and/or
27 dissuading employees from taking legally compliant meal periods. Employees are entitled to a
28 meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and the class

1 consistently worked over five (5) hour shifts without meal periods due to Defendant's policy of
2 discouraging, dissuading and/or impeding Plaintiff and the class from taking meal periods.
3 Plaintiff and the class are entitled to a meal period of not less than thirty (30) minutes prior to
4 exceeding five (5) hours of employment, and a second meal period for hours worked over ten
5 (10) in a day. Further, Defendant frequently interrupted Plaintiff and the class while on their
6 breaks. Additionally, Defendant has a practice of requiring employees to remain on premises for
7 said breaks.

8 55. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
9 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code
10 during the relevant class period and/or failed to obtain legal waivers waiving the first or second
11 meal period.

12 56. Further, even if meal premiums were paid, they were not paid at the correct
13 regular rate.

14 57. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in
15 an amount equal to one (1) hour of wages at the employee's regular rate per missed meal break.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

18 **(Against All Defendants)**

19 58. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
20 aforementioned allegations.

21 59. The Plaintiff alleges that Defendant has violated Labor Code §§226.7 & the
22 applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an
23 additional hour (1) of compensation for each rest period the employer fails to provide. Hourly
24 non-exempt employees are entitled to a paid ten (10) minute rest break for every four (4) hours
25 worked or major fraction thereof. The Defendant's policy discourages, dissuades, and prevents
26 all hourly non-exempt employees from taking a duty-free rest period break for any work period
27 that is greater than two (2) hours up to four (4) hours. Plaintiff and the class consistently
28 worked over four (4) hours per shift with no duty-free, off-premises rest breaks, due to

1 Defendant's policy of discouraging, dissuading and/or preventing hourly employees from taking
2 said breaks off-premises.

3 60. Further, even if rest premiums were paid, they were not paid at the correct
4 regular rate.

5 61. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in
6 an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest
7 break violation, in a sum to be proven at trial.

8 **SIXTH CAUSE OF ACTION**

9 **WORK EXPENDITURE REIMBURSEMENTS**

10 **(Against All Defendants)**

11 62. Plaintiff re-alleges and incorporate each and every one of the allegations of all
12 preceding paragraphs.

13 63. Labor Code section 2802(a) requires an employer to indemnify their employees
14 for all necessary expenditures or losses in the direct discharge of their duties.

15 64. Defendant has a uniform policy that requires Plaintiff and the class members to
16 pay for tools and supplies but did not reimburse for such items.

17 65. As a result, Plaintiff and the class members are entitled to reimbursement for all
18 the above expenses, as well as attorney fees and costs.

19 **SEVENTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(Against All Defendants)**

22 66. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
23 allegations of the preceding paragraphs.

24 67. Labor Code §§ 200, et. seq., provides that an employer is required to pay an
25 employee all wages (including accrued vacation), within twenty four (24) hours of the
26 employees' involuntary separation from employment; within twenty four (24) hours of his or her
27 voluntary separation if the employee gave at least seventy two (72) hours' notice, and within
28 seventy two (72) hours, if the employee voluntarily separated, but did not give at least seventy

1 two (72) hours' notice.

2 68. Plaintiff and other former employees of Defendant employed in the State of
3 California separated from employment with defendant. Plaintiff and all others similarly situated
4 did not timely receive a final paycheck from Defendant in violation of Labor Code §§
5 200, et seq. Plaintiff is informed and believes and thereon alleges that Defendant also violated
6 the mandates of Labor Code §§ 200, et seq., as to other employees whose employment ended
7 during the period of time covered by this action.

8 69. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer
9 works for defendant, and who was not timely paid is entitled to one (1) day of pay in penalties
10 for each day that he or she was paid late, until payment was made, up on a maximum of thirty
11 (30) days.

12 70. Based on the willful nonpayment of wages as described above, the waiting time
13 penalty applies to Ponce and members of the waiting time penalty subclass, which is 30 days of
14 each class members' wages at their regular rate of pay.

15 **EIGHTH CAUSE OF ACTION**

16 **CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699**

17 71. Plaintiff re-alleges and incorporates each and every one of the allegations of all
18 preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth
19 herein.

20 72. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of
21 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
23 agencies or employees for a violation of the Labor Code, may be recovered through a civil
24 action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of
25 all other current or former employees.

26 73. Whenever the LWDA, or any of its departments, divisions, commissions, boards
27 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
28

1 authorized to exercise the same discretion, subject to the same limitations and conditions to
2 assess a civil penalty.

3 74. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
4 employees" as defined by Labor Code §2699, in that they are all current or former employees of
5 Defendants, and one or more of the alleged violations was committed against them.

6 75. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or
7 about September 26, 2023, via mandatory online filing through the State of California LWDA/
8 Department of Industrial Relations website with a copy to the employer via certified mail, of the
9 specific provisions of this code alleged to have been violated, including listing some facts and
10 some theories to support the alleged violations as required by Labor Code §2699.3; A true and
11 correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that he has exhausted
12 all administrative remedies and filed the herein complaint 65 days after mailing said notice. At
13 the date of filing this Complaint, the LWDA has not responded with any intention to
14 investigate. As such, Plaintiff has exhausted his administrative requirements pursuant to Labor
15 Code §2699.3(a)(1) and (2) (A-C).

16 76. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
17 behalf of themselves and other current or former employees, to bring a civil action to recover
18 civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

19 77. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
20 employees are entitled to recover civil penalties for each of the Defendant's violations of Labor
21 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the
22 applicable limitations period in the following amounts:

- 23 a. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
24 each aggrieved employee for each initial violation and two hundred dollars
25 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the
26 amount unlawfully withheld from each aggrieved employee for each subsequent,
27 willful or intentional violation (penalty amounts established by California Labor
28 Code § 210).

- 1 b. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00) per
2 employee for initial violation and one thousand dollars (\$1,000.00) per employee
3 for each subsequent violation (penalty amounts established by Labor Code §
4 226.3).
- 5 c. For violations of Labor Code § 512, fifty dollars (\$50.00) for each aggrieved
6 employee for each initial violation for pay period for which the employee was
7 underpaid in addition to an amount sufficient to recover unpaid wages and one
8 hundred dollars (\$100.00) for each underpaid employee for each pay period for
9 which the employee was underpaid (penalty amounts established by
10 Labor Code § 558).
- 11 d. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for each
12 aggrieved employee for each initial and intentional violation per pay period
13 (regardless of whether the initial violations were intentionally committed) and
14 two hundred fifty dollars (\$250.00) for each aggrieved employee for each
15 subsequent violation per pay period (regardless of whether the initial violations
16 were intentionally committed), in addition to an amount sufficient to recover
17 unpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and
18 applicable penalties imposed pursuant to Labor Code § 203.
- 19 e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars
20 (\$100.00) for each aggrieved employee per pay period for each initial violation
21 and two hundred dollars (\$200.00) for each aggrieved employee per pay period
22 for each subsequent violation (penalty amounts established by Labor Code §
23 2699(f)(2)).
- 24 f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of
25 Regulations in the amount of \$50 for each aggrieved employee per pay period
26 for the initial violation, and \$100 for each aggrieved employee per pay period for
27 each subsequent violation;
28

- 1 g. Penalties under Labor Code §210, in addition to and entirely independent and
2 apart from other penalty provided in the Labor Code, in the amount of \$100 for
3 each aggrieved employee per pay period for each violation, and \$200 for each
4 aggrieved employee per pay period for each subsequent violation, plus 25% of
5 the wage wrongly withheld;
- 6 h. Penalties under Labor Code §256, in addition to and entirely independent and
7 apart from other penalty provided in the Labor Code, including Labor Code
8 §2699, et seq., for any aggrieved employee who was discharged or quit, and was
9 not paid all earned wages at termination in accordance with Labor Code §§201,
10 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
11 at the same rate, for each day that he or she was paid late, until payment was/is
12 made, up to a maximum of thirty (30) days;
- 13 i. Penalties under Labor Code §558, in addition to and entirely independent and
14 apart from other penalty provided in the Labor Code, in the amount of \$50 for
15 each underpaid aggrieved employee for each pay period the aggrieved employee
16 was underpaid, and \$100 for each subsequent violation for each underpaid
17 employee for each pay period for which the employee was underpaid pursuant to
18 Labor Code §558 provided to the affected employees;
- 19 j. Penalties under Labor Code §226.3, in addition to and entirely independent and
20 apart from other penalty provided in the Labor Code, in the amount of \$250 for
21 each aggrieved employee per pay period for each violation, and \$1,000 for each
22 aggrieved employee per pay period for each subsequent violation;
- 23 k. Any and all additional penalties and sums as provided by the Labor Code and/or
24 other statutes.
- 25 l. Penalties under Labor Code section 210 for the weekly pay violations.
- 26 78. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees
27 are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection
28 with their claims for civil penalties.

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays:

4 1. That the Court determines this action may be maintained as a class action;

5 **As to the First Cause of Action:**

6 2. For an order, preliminarily and permanently enjoining Defendant from engaging
7 in the practices challenged herein;

8 3. An order for full restitution of all monies, as necessary and according to proof, to
9 restore any and all monies withheld by the Defendant by means of the unfair practice complained
10 of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as
11 necessary. The restitution includes all monies retained as wages, as defined in Labor Codes §§
12 201, 202, 510 1194, 1194.2, and interest, and attorneys' fees as a result of the unfair business
13 practices;

14 4. For an order for full restitution of all wages withheld due to Defendant's unfair
15 and fraudulent business practices;

16 5. For an order finding and declaring that Defendant's acts and practices as
17 challenged herein are unlawful, and unfair and/or fraudulent;

18 6. For an accounting, under administration of Plaintiff and subject to Court Review,
19 to determine the amount to be returned by Defendant and the amounts to be refunded to members
20 who are or were not paid all their wages due to Defendant's unfair business practices;

21 7. For the creation of an administrative process wherein each injured current and
22 former employee receives his or her back wages in the form of overtime pay or alternatively that
23 each current or former eligible employee may submit a claim in order to receive his/her money;

24 8. For an order requiring Defendant to make full restitution and payment pursuant to
25 B&PC §§17200, et seq.;

26 9. For all other appropriate declaratory and equitable relief;

27 10. For pre-judgment interest to the extent permitted by law and the California
28 Constitution;

1 11. For an order requiring Defendant to identify, by name, address and telephone
2 number of each person who worked as an hourly exempt employee for Defendant from four (4)
3 years preceding the filing of this action through the time of judgment;

4 **As to the Second Cause of Action:**

5 12. For damages according to proof, as set forth in Labor Code §§ 510, 1194, and
6 1194.2, et. seq., (and the applicable California Industrial Welfare Commission wage orders)
7 regarding wages due and owing.

8 13. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil
9 Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for
10 reasonable attorneys' fees;

11 14. For recovery of the unpaid balance of the full amount of unpaid minimum wage
12 or overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2,
13 1197, and 1198 due and owing, according to proof;

14 15. For liquidated damages in an amount equal to the wages unlawfully unpaid and
15 interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor
16 Code §1194.2(a);

17 16. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
18 §1194(a) and CC §3287;

19 17. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
20 §218.5 and/or Labor Code §1194(a);

21 **As to the Third Cause of Action:**

22 18. For recovery as authorized by Labor Code §226(e);

23 19. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
24 §226(e) and/or §226(h);

25 **As to the Fourth Cause of Action:**

26 20. One (1) hour of pay at each of the employees' regular rate of compensation for
27 each workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

28 **As to the Fifth Cause of Action:**

21. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a rest break was not remitted or authorized, or was impeded, discouraged and/or dissuaded.

As to the Sixth Cause of Action:

22. Reimbursement of all deductions from wages related to expenses;

23. Reimbursement for all fees relating to obtaining physical checks;

24. Attorney fees and costs;

As to the Seventh Cause of Action:

25. Waiting time penalties, attorneys fees and costs;

As to All Causes of Action:

26. For reasonable costs incurred;

As to the Eighth Cause of Action:

27. On behalf of all current and former employees, for all civil penalties authorized by Labor Code Private Attorney General Act of 2004 as specified in Labor Code §558 plus Labor Code §1197.1 for former or current employees who are due wage payments;

28. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

29. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

30. For civil penalties, pursuant to Labor Code § 558 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;

1 31. For civil penalties under Labor Code §210, in addition to and entirely independent
2 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each
3 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per
4 pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

5 32. For civil penalties under Labor Code §2699(f), in addition to and entirely
6 independent and apart from other penalty provided in the Labor Code and for Labor Code
7 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
8 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
9 subsequent violation.

10 **As to All Causes of Action:**

11 33. For such other and further relief as this Court may deem just and proper.
12

13 Date: December 1, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER



Janelle Carney
Attorney for Plaintiff
Fabian Gonzalez



Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

Seven Seas Associates, LLC
411 Hotel Circle
San Diego, CA 92108-3402

Subject: *Fabian Gonzalez v. Seven Seas Associates, LLC*

Dear Representative:

This office along with Frontier Law Center represents Fabian Gonzalez in connection with Labor Code violation claims related to employment with Seven Seas Associates, LLC ("Seven Seas"). Seven Seas owns and operates the Best Western Seven Seas in San Diego.

Mr. Gonzalez intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Seven Seas in California who were subject to any of the Labor Code violations during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter.

Overtime Violations

Labor Code sections 510 and 1194 and the applicable Wage Order, which is Wage Order 5, require an employer to pay 1.5 times an employee's regular rate for all hours over eight. Here, Seven Seas required Mr. Gonzalez and the Aggrieved Employees to work off the clock. This led to underpayment of wages, as Mr. Gonzalez and the Aggrieved Employees were told to clock out and finish tasks off the clock.

Mr. Gonzalez and the Aggrieved Employees should have received overtime pay for work they continued to do off the clock. As a result, the PAGA penalties in Labor Code sections 558, 1194.2 and 1197.1 apply.

Regular Rate

Mr. Gonzalez also alleges that Seven Seas fails to include all non-discretionary remuneration when calculating the regular rate of pay and by such failure, underpaid employees their overtime. This practice also resulted in underpayments of employees' missed meal and/or

rest period premiums. Mr. Gonzalez is entitled to seek LC § 226.7, 558, and 2699 penalties accordingly.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order 5-01 provide that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided. Mr. Gonzalez and the Aggrieved Employees could not take compliant meal periods; Meal periods were short, late, or missed altogether. Mr. Gonzalez was regularly interrupted on his breaks, thus he should have received premium pay for each missed break. Nonetheless, no premium pay was paid, and as a result PAGA penalties apply.

Mr. Gonzalez is entitled to penalties in LC § 558 and 2699, et seq.

Rest Break Violations

The applicable Wage Order 5-01 requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided. Further, an employer may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, Mr. Gonzalez and the Aggrieved Employees were always on call and as a result would have to respond to issues on a break. Further, Mr. Gonzalez and the Aggrieved Employees were not allowed to leave the work premises unless clocked out. Thus, they were subject to Employer's control during the rest breaks. The Aggrieved Employees and Mr. Gonzalez were not provided with compliant rest breaks and PAGA penalties apply.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Here, Mr. Gonzalez and the Aggrieved Employees incurred out of pocket expenses in connection with their employment, including but not limited to out-of-pocket expense tools to perform their jobs. These expenses were not reimbursed. As a result, PAGA penalties apply.

Wage Statement Violations

Seven Seas' paystubs do not reflect all the hours worked due to the off the clock issues mentioned supra, the paystubs are not compliant for failing to list all hours worked since the paystubs omit the off the clock work. Further, the pay stubs do not include total hours worked. Labor Code section 226, subdivision (a) states:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

The paystubs do not accurately reflect all the hours worked, due to the fact numerous hours of work are missing.

Mr. Gonzalez and other employees are entitled to recover civil penalties pursuant to section 226.3, which states in relevant part: "Any employer who violates subdivision (a) of Section 226 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...fail[ing] to keep the records required in subdivision (a) of Section 226."

Suitable Seating

Paragraph 14 of Wage Order 5 provides the following:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Seven Seas does not provide suitable seats although the nature of the work for Aggrieved Employees of Seven Seas would allow for seats. Accordingly, Mr. Gonzalez and the Aggrieved Employees are entitled to Labor Code Section 2698, et seq.

Waiting Time Penalties

The unpaid overtime wages described above were still due when Mr. Gonzalez and the Aggrieved Employees stopped working for Seven Seas. Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Seven Seas had an obligation to pay waiting time penalties, but intentionally failed to do so and did not pay waiting time penalties. Thus, PAGA penalties apply.

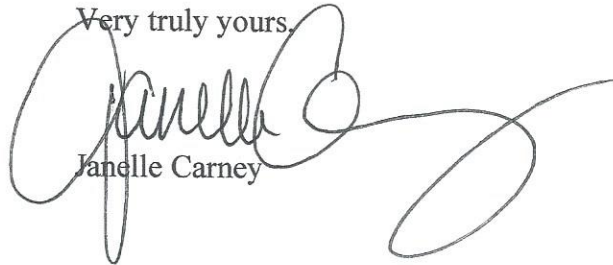
Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Gonzalez becomes aware of additional compensation owed or losses incurred by Mr. Gonzalez or by any other aggrieved employee, Mr. Gonzalez expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

September 26, 2023

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Mr. Gonzalez intends to pursue his claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for the employer that were subject to the same Labor Code violations described above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Janelle Carney", with a long, sweeping horizontal flourish extending to the right.

Janelle Carney

JC/jw

Cc: Frontier Law Center