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Attorneys for Plaintiff Ashley Nunez Estrada

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ASHLEY NUNEZ ESTRADA, individually and
on behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiffs,

vs.

BAXTER HOTEL GROUP, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00052417-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff ASHLEY NUNEZ ESTRADA, individually and on behalf of all others similarly
2 situated and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants BAXTER HOTEL GROUP, INC.
4 and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action brought under the California Private Attorneys General
7 Act (Labor Code sections 2698 *et seq.*)

8 2. Defendants underpaid Plaintiff’s and the aggrieved employees’ wages by failing to
9 include all forms of non-discretionary remuneration, including bonuses, into the regular rate of pay
10 for overtime, paid sick leave, and premium payments.

11 3. Defendants engaged in the unlawful practice of making unauthorized edits to Plaintiff’s
12 and the aggrieved employees records further affecting regular, overtime, and premium wages.

13 4. Defendants failed to maintain compliant meal and rest period policies and practices,
14 resulting in failure to pay all wages and premiums owed to the aggrieved employees at the lawful rate.

15 5. Defendants’ employment policies and practices and payroll administration systems
16 enabled these violations on a company-wide basis with respect to the aggrieved employees.

17 **JURISDICTION & VENUE**

18 6. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
19 California Constitution as the causes of action are premised upon violations of California law.

20 7. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
21 the Superior Court.

22 8. This Court has jurisdiction over Defendants because, upon information and belief,
23 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
24 themselves to the California economy so as to render the exercise of jurisdiction over them by the
25 California courts consistent with traditional notions of fair play and substantial justice.

26 9. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
27 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
28 of the alleged violations in this county.

PARTIES

A. Plaintiff Ashley Nunez Estrada

10. Plaintiff Estrada is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 12, 2022, to July 17, 2023. Plaintiff worked as a Housekeeper.

11. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

12. Defendant Baxter Hotel Group, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

16. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated

enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

17. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage for all hours worked due to unauthorized edits made by supervisors, resulting in unpaid minimum wages and overtime wages.

18. Defendants had an unlawful policy and practice of editing Plaintiff's and the aggrieved employees time records to avoid paying all regular hours, overtime, and meal period premiums. Defendants engaged in an unlawful policy and practice of time shaving, every time they edited Plaintiff's and the other aggrieved employees' time records without their knowledge or authorization to reflect less than their actual hours worked.

19. Plaintiff's time records show consistent edits, evidenced by an icon of a person (representing "edits") next to the time punch instead of a fingerprint icon (representing Plaintiff's time punch).

20. These edits were routinely made each time Plaintiff began work early (and clocked in at that time), when Plaintiff would work an excessive amount of overtime hours, and in order to avoid paying meal period premiums. Defendants violated Labor Code 1194 by failing to pay the minimum wage for all hours worked each time Defendants engaged in this unlawful practice.

21. To the extent Defendants' unlawful practice of time shaving removed hours worked after 8 hours in a day or 40 hours in a week, this practice resulted in unpaid overtime.

22. Defendants additionally failed to pay Plaintiff and the aggrieved employees all overtime hours at the regular rate of pay. Defendants should have (but failed to) pay overtime "at a rate of no less than ***one and one-half the regular rate of*** pay for an employee" and "twice the regular rate of pay" for double time hours as required by the plain language of Labor Code section 510(a) and IWC Wage Orders.

23. Plaintiff and the aggrieved employees earned bonuses and other forms of additional remuneration which was not factored into the overtime rate. For example, on Plaintiff's wage statement from the pay period 1/16/2023 to 1/31/2023 Plaintiff earned a bonus of \$71.51 that was not

factored into Plaintiff's overtime rate. Instead, the overtime hours were paid at a straight 1.5x Plaintiff's base rate of \$16.30. Defendants therefore improperly calculated the overtime rate by paying it at a lower and deficient rate.

24. Based on Defendants non-compliance of the regular rate of pay requirements applicable to overtime and premiums, Plaintiff alleges on information and belief that the regular rate miscalculation equally applied to standard and supplemental paid sick leave with respect to the aggrieved employees, resulting in underpayments.

25. To the extent aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful rate of pay throughout the relevant period. The lawful rate of pay had to factor in bonuses, commissions, and all other forms of additional remuneration.

26. Defendants failed to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. During her employment, Plaintiff earned vacation hours or PTO, but the earned hours were not paid out upon her termination of employment.

27. Plaintiff and the aggrieved employees experienced late, missed, and interrupted meal periods due to the pressure to keep up with the high demands of the job and understaffing. When Plaintiff and the aggrieved employees experienced these non-compliant meal periods, Defendants failed to pay Plaintiff and the aggrieved employees meal period premiums as required by Labor Code section 226.7.

28. For example, Plaintiff was often assigned to clean and turnover an entire floor of hotel rooms by herself and tasked to complete a majority of the rooms before taking any type of break, causing Plaintiff to often take her meal periods late. Additionally, Plaintiff's meal periods were often short or interrupted due to pressure from the Defendants to eat quickly and get back to work before the mandated 30-minutes were reached. Defendants did so by calling for Plaintiff and the aggrieved employees over the radio or finding them while they were eating and asking they return to work.

29. Plaintiff's records show Plaintiff experienced a short (less than 30-minute) meal period on 1/22/2023. Plaintiff's wage statement for the corresponding pay period further reveals Defendants

1 failed to pay Plaintiff a meal period premium for this deficient meal period, in violation of Labor Code
2 226.7.

3 30. Additionally, Defendant's frequently edited Plaintiff's and the aggrieved employees'
4 noncompliant meal periods to make them appear compliant and timely to avoid paying meal period
5 premiums. An example of this violation is shown on Plaintiff's time records on 1/1/2023. Defendants
6 again failed to pay Plaintiff a meal period premium for this deficient meal period.

7 31. To the extent that Defendants did pay meal period premiums, Defendants failed to pay
8 all meal period premiums at the regular rate of pay because the premiums did not factor in bonuses
9 and other types of non-excludable remuneration, instead of electing to pay aggrieved employees at
10 their base hourly rate.

11 32. For the same reasons Plaintiff and the aggrieved employees could not take compliant
12 meal periods, Plaintiff and the aggrieved employees also experienced non-compliant rest periods.

13 33. When Plaintiff and the aggrieved employees experienced missed and interrupted rest
14 periods, Defendants failed to pay rest period premiums at the regular rate of pay as required by Labor
15 Code 226.7

16 34. Because of these violations, Defendants failed to provide accurate itemized wage
17 statements to the aggrieved employees that included that accurate total gross or net wages earned, as
18 the employees worked regular and overtime hours that were unaccounted for, and earned overtime
19 pay, paid sick leave, and premiums which were not paid at the lawful rate in light of the regular rate
20 violations.

21 35. Likewise, overtime and double-time were also paid at inaccurate hourly wage rates (i.e.
22 multiple if the base rate for overtime instead of the regular rate, or the overtime rate instead of the
23 double-time rate) which violates the wage statement requirement to include the correct hourly rate in
24 effect each pay period along with the correct number of hours. Therefore, Defendants have provided
25 inaccurate and non-compliant wage statements to the aggrieved employees.

26 36. These violations create derivative liability for failure to pay all wages owed each
27 payday or upon separation of employment. Through this action, Plaintiff seeks to enforce the rights
28

1 to the State of California, through the LWDA, to enforce the Labor Code and collect civil penalties
2 for Defendants' Labor Code violations.

3 **FIRST CAUSE OF ACTION**

4 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

5 **Violation of Labor Code §§ 2698 *et seq.***

6 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

7 1. All outside paragraphs of this Complaint are incorporated into this section.

8 2. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
9 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
10 codified as Labor Code section 2698 *et seq.*:

11 a. All current and former non-exempt employees who worked for Defendants in
12 California at any time from one year prior to the postmark date of the initial
13 PAGA notice through date of trial.

14 3. Plaintiff reserves the right to amend, supplement, or add to this description of the
15 aggrieved employees, according to proof.

16 4. The State of California, via the Labor and Workforce Development Agency
17 ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
18 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff
19 files suit is always the real party in interest."])

20 5. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,,
21 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
22 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
23 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
24 action brought by an aggrieved employee on behalf of himself or herself and other current or former
25 employees pursuant to the procedures specified in Section 2699.3. "

26 6. Labor Code section 2699(f) provides: "For all provisions of this code except those for
27 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
28 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

7. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

8. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

9. On or about **September 25, 2023**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

10. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the “PAGA notice”).

11. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s written PAGA notice from the LWDA.

12. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

13. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

14. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

15. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

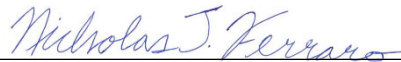
Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil and statutory penalties and liquidated damages;
- d. For disgorgement of all amounts wrongfully obtained;
- e. For this action to be maintained as a representative action under the PAGA;

- 1 f. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 g. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 h. For restitution and injunctive relief;
6 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
8 1194, 2699, and Code of Civil Procedure section 1021.5; and
9 j. For such other relief the Court deems just and proper.

10 Dated: November 30, 2023

Ferraro Vega Employment Lawyers, Inc.

11
12 

13 Nicholas J. Ferraro

14 *Attorneys for Plaintiff Ashley Nunez Estrada*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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September 25, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Baxter Hotel Group, Inc.
630 Ash Street
San Diego, CA 92101

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **ASHLEY NUNEZ ESTRADA** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

BAXTER HOTEL GROUP, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations

during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Housekeeper from about February 12, 2022 to July 17, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

Defendants had an unlawful policy and practice of editing Plaintiff’s and aggrieved employees’ time records to avoid paying all regular hours, overtime, and meal period premiums. By making these edits, Defendants engaged in the unlawful practice of time shaving, every time they edited Plaintiff’s and, on information and belief, other aggrieved employees’ time records without their knowledge or authorization to reflect less time than the actual hours worked.

An illustrative example of these edits is shown below:

Fingerprint

Absent

Edited

Sick

Card based

Holiday

Password based

Vacation

Clock in By PC

Late Arrival / Early

Telephone

Iris

System

USB

User ID: 275

Name: Nunez Estrada Ashley

Location: Holiday Inn Express

Department: HIE Housekeeping

Approved by manager

Day	Time In	Time Out	Regular	OT	DT	Breaks	BP	Total	Rate	Amount
Tue, Feb/22/2022	8:00 AM	12:00 PM	04:00	00:00	00:00	00:00	00:00	15.00		\$60.00
Tue, Feb/22/2022	12:30 PM	5:49 PM	04:00	01:19	00:00	00:30	00:00	09:19	15.00	\$89.63
Wed, Feb/23/2022	8:00 AM	12:00 PM	04:00	00:00	00:00	00:00	00:00	15.00		\$60.00
Wed, Feb/23/2022	12:30 PM	5:00 PM	04:00	00:30	00:00	00:30	00:00	08:30	15.00	\$71.25
Mon, Feb/28/2022	8:00 AM	12:00 PM	04:00	00:00	00:00	00:00	00:00	15.00		\$60.00
Mon, Feb/28/2022	12:30 PM	4:30 PM	04:00	00:00	00:00	00:30	00:00	08:00	15.00	\$60.00

Extract from Plaintiff’s Time Records

Plaintiff's records show her time punches were edited and changed to reflect less hours worked. On information and belief, this was routinely done when Plaintiff began work early and clocked-in at that time or when Plaintiff would work an excessive amount of overtime hours. Defendants violated Labor Code 1194 by failing to pay the minimum wage for all hours worked, each time Defendants engaged in this unlawful practice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / "Penalties" section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, to the extent Defendants' unlawful practice of time shaving removed hours worked after 8 hours in a day or in 40 hours in a week, this practice resulted in unpaid overtime. On information and belief, Defendants through their supervisors would routinely shave off time or fail to pay Plaintiff and aggrieved employees anywhere from 30 minutes to several hours of overtime each pay period.

Second, on information and belief, Defendants had an unlawful policy and practice of failing to pay all overtime hours at the regular rate of pay. Plaintiff and the aggrieved employees earned bonuses and other additional remuneration. When Plaintiff and the aggrieved employees earned overtime in the same pay period they earned a bonus, Defendants failed to pay overtime at the regular rate of pay.

Defendants paid overtime to Plaintiff at a rate less than 1.5x the regular rate of pay. For each overtime hour Plaintiff and the aggrieved employees worked during the periods in which they earned a bonus or other non-excludable remuneration, Defendants should have (but failed to) pay overtime “at a rate of no less than **one and one-half the regular rate of pay** for an employee” and “**twice** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and IWC Wage Orders.

An illustrative example of these violations is shown below:

EARNINGS	BASIS OF DESCRIPTION PAY	HRS/UNITS	RATE THIS PERIOD (\$)		YTD HOURS	YTD (\$)
	Regular	59.7500	16.3000	973.93	142.7500	2318.66
	Overtime	0.5000	24.4500	12.23	0.7500	18.34
	Bonus			71.51		71.51
	Covid EE 2022				24.0000	384.00
	Sick	16.0000	16.3000	260.80	16.0000	260.80
	Total Hours	76.2500			183.5000	
	Gross Earnings			1318.47		3053.31
	Total Hrs Worked	60.2500				

Extract of Plaintiff's Wage Statement from the Pay Period 1/16/2023 to 1/31/2023

During this pay period, Plaintiff earned a bonus of \$71.51, that was not factored into Plaintiff's overtime rate. Instead, the overtime hours were paid at a straight 1.5x Plaintiff's base rate of \$16.30. Defendants therefore improperly calculated the overtime rate by paying it at a lower and deficient rate. Plaintiff alleges Defendants committed the same “regular rate of pay” violations against the other aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain

the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

To the extent aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful rate of pay throughout the relevant period. The lawful rate of pay had to factor in bonuses, commissions, and all other forms of compensation. Based on Defendants non-compliant regular rate of pay requirement applicable to overtime and meal and rest period premiums, Plaintiff alleges on information and belief that the regular rate of pay miscalculation (by failing to include all forms of remuneration in the regular rate) equally applies to standard and supplemental paid sick leave with respect to the aggrieved employees, resulting in underpayments.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, bonuses, commissions, and other forms of non-excludable remuneration and also paid sick leave.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. During her employment, Plaintiff earned vacation or PTO pursuant, but that amount was not paid out upon her termination of employment.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each

workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and, on information and belief, the aggrieved employees experienced late, missed, and interrupted meal periods due to the pressure to keep up with the high demands of the job and understaffing. Specifically, Plaintiff was often assigned to clean and turnover an entire floor of hotel rooms by herself and tasked to complete a majority of the rooms before taking any type of break. When Plaintiff and the other aggrieved employees experienced these noncompliant meal periods, Defendants failed to consistently pay Plaintiff and other aggrieved employees meal period premiums, as required by Labor Code section 226.7.

An illustrative example of these violations is shown below:

Sun, Jan/22/2023	9:05 AM	1:02 PM	03:57	00:00	00:00	00:00	00:00	16:00	\$63.20
Sun, Jan/22/2023	1:31 PM	5:33 PM	04:02	00:00	00:00	00:29	00:00	07:59 16:00	\$64.53

Extract of Plaintiff's Time Records Showing Plaintiff Experienced a Late Meal Period

EARNINGS	BASIS OF DESCRIPTION PAY	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)	
	Regular	59.7500	16.3000	973.93	142.7500	2318.66
	Overtime	0.5000	24.6500	12.23	0.7500	18.34
	Bonus			71.51		71.51
	Covid EE 2022				24.0000	384.00
	Sick	16.0000	16.3000	260.80	16.0000	260.80
	Total Hours	76.2500			183.5000	
	Gross Earnings			1318.47		3053.31
	Total Hrs Worked	60.2500				

Extract of Plaintiff's Wage Statement from the Pay Period 1/16/2023 to 1/31/2023

Plaintiff's records show Plaintiff experienced a short meal period on 1/22/2023 because the meal period was less than the mandated uninterrupted 30-minutes. One reason for these recurrent short and interrupted meal periods was due to Defendants pressuring and rushing Plaintiff and the aggrieved employees back to work from their mandated meal break before the 30-minutes were reached. Defendants did so by calling for Plaintiff and the aggrieved employees over radio or finding them while they were eating and asking them to return to work. Further, Plaintiff's records show she was not paid a corresponding meal period premium, in violation of Labor Code 226.7.

Additionally, Defendants frequently edited Plaintiff's and the aggrieved employees' noncompliant meal periods to make them appear compliant, timely, and complete to avoid paying meal period premiums. An illustrative example is shown below:

Sun, Jan/1/2023	☀ 9:00 AM	☀ 12:26 PM	03:26	00:00	00:00	00:00	00:00
Sun, Jan/1/2023	👤 12:56 PM	☀ 5:33 PM	04:34	00:03	00:00	00:30	00:00

Extract of Plaintiff's Time Records Showing Defendants Edit to Plaintiff's Meal Period

Here, Plaintiff's meal period was edited to reflect a meal period of exactly 30-minutes. To the extent that Defendants edited these noncompliant meal periods without the knowledge or permission of the aggrieved employees to make them appear as compliant, Defendants should have, but failed to pay Plaintiff and the aggrieved employees meal period premiums.

Finally, to the extent that Defendants paid meal period premiums, Defendants failed to pay all meal period premiums at the regular rate of pay because the premiums did not factor in bonuses, commissions, and all other types of remuneration, instead electing to pay aggrieved employees at the base hourly rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Plaintiff and other aggrieved employees experienced missed and interrupted rest periods due to the pressure to keep up with the high demands of the job and understaffing in addition to

the reasons stated in the Meal Period section above. When Plaintiff and the aggrieved employees experienced these missed and interrupted rest periods, Defendants failed to pay rest period premiums at the regular rate of pay as required by Labor Code section 226.7. Defendants had an unlawful policy and practice of not paying Plaintiff and, on information and belief, the aggrieved employees rest period premiums when they experienced non-compliant rest periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Defendants failed to pay all wages on time. On information and belief, Plaintiff and the aggrieved employees were scheduled to be paid on the 5th and 20th of every month, yet on multiple occasions the aggrieved employees would attempt to pick up their check and Defendants would fail to provide them on account of not having it ready. While the majority of Plaintiff’s wage statement have pay dates that are consistent with these dates, on several occasions, Plaintiff and, on information and belief, other aggrieved employees had to wait up to 3 days after their scheduled pay date to be provided their check. To the extent that this policy and practice resulted in all wages not being paid within 7 calendar dates after the close of the payroll period, Defendants violated Labor Code 204(d).

Additionally, because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. To the extent that Defendants unlawful policy and practice of timesaving resulted in less regular and overtime hours being paid, this resulted in a violation of Labor Code section 226(a)(1) and (5) because they could not have correctly listed the true gross or net earnings.

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to track all hours works and pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

EM

Cc Plaintiff Ashley Nunez Estrada
Michael Nguyen, Chief Financial Officer – mnguyen@baxterhg.com
Peter Lassalette, Chief Operating Officer – plassalette@baxterhg.com