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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Christelle Tachon, Deputy Clerk

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

DEVON HARPER, individually and on behalf of
all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

BELMONT PARK ENTERTAINMENT LLC;
PE MANAGEMENT GROUP INC.; SAN
DIEGO COASTER COMPANY LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00054435-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff DEVON HARPER, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants BELMONT PARK
4 ENTERTAINMENT LLC; PE MANAGEMENT GROUP INC.; SAN DIEGO COASTER
5 COMPANY LLC; and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

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

9 2. Defendants underpaid Plaintiff and the aggrieved employees’ wages by failing to
10 include all forms of remuneration, including service charges, into the regular rate of pay for overtime,
11 paid sick leave, and premium payments.

12 3. Defendants failed to pay Plaintiff and the aggrieved employees for all regular and
13 overtime hours worked, resulting in unpaid hours worked.

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

16 **JURISDICTION & VENUE**

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

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

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

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

PARTIES

A. Plaintiff Devon Harper

9. Plaintiff Harper is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 27, 2022 to July 17, 2023. Plaintiff worked as a Bartender.

10. 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

11. Defendant Belmont Park Entertainment LLC is a limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

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

13. Defendant San Diego Coaster Company LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

14. 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.

15. 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.

16. 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.

17. 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

18. Defendants failed to pay overtime, paid sick leave, and premiums at the regular rate of pay.

19. Plaintiff and the aggrieved employees earned additional remuneration, including service charges, which were not included in the regular rate of pay calculation. Instead, Defendants paid aggrieved employees' overtime, paid sick leave, and meal and rest premiums at their base hourly rate (or multiple thereof), resulting in an underpayment of wages.

20. Unlike tips, which are discretionary under Labor Code section 351, service charges are a non-discretionary, set percentage automatically applied and earned for private parties or special events and therefore should be included in the regular rate of pay. *Compere v. Nusret Miami, LLC* (11th Cir. 2022) 28 F.4th 1180 (holding service charges are not tips and therefore “properly considered part of the [e]mployees’ ‘regular rate of pay’”).

21. Plaintiff and the aggrieved employees experienced missed, late, short, 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 a non-compliant meal period, Defendants failed to consistently pay Plaintiff and the aggrieved employees meal period premiums as required by Labor Code section 226.7.

22. Defendants tracked meal period premiums on wage statements, but improperly paid them as regular hours worked instead of hours in *addition* to the hours worked.

1 23. For example, Plaintiff's wage statement for the pay period August 16, 2022, to August
2 31, 2022 shows Plaintiff worked approximately 71.80 regular hours, yet was only paid for 68.88 hours
3 regular. In this same pay period, Plaintiff earned 3 meal period premiums. When adding the regular
4 paid 68.88 hours and the 3-meal period premium hours it totals to 71.88 hours, showing that
5 Defendants failed to pay the premium hours in *addition* to all regular hours, and instead included them
6 in the hours worked in violation of Labor Code 226.7.

7 24. In doing so, Plaintiff's meal period premiums could not have been paid at the regular
8 rate of pay in the pay periods he also earned additional remuneration. Instead, those hours were paid
9 at Plaintiff's base rate.

10 25. For the same reasons Plaintiff and the aggrieved employees could not take compliant
11 meal periods, Plaintiff and the aggrieved employees also experienced non-compliant rest periods.
12 When Plaintiff and the aggrieved employees experienced these missed and interrupted rest periods,
13 Defendants failed to pay rest period premiums at the regular rate of pay as required by Labor Code
14 226.7.

15 26. To the extent Defendants did pay rest period premiums, these premiums were
16 underpaid due to Defendants' failure to pay rest period premiums at the regular rate of pay as required
17 by Labor Code 226.7.

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

20 28. For example, Plaintiff's wage statement for the pay period 6/16/2022 to 6/30/2022,
21 shows Plaintiff worked a total of approximately 29.67 regular hours but was only paid 27.12 regular
22 hours. Defendants engaged in the unlawful practice of time shaving every time they removed hours
23 Plaintiff and the aggrieved employees actually worked, resulting in unpaid hours worked.

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

26 30. Based on Defendants noncompliance with the regular rate of pay requirement
27 applicable to overtime and meal and rest period premiums, Plaintiff alleges the regular rate
28

1 miscalculation equally applies to standard and supplemental paid sick leave with respect to the
2 aggrieved employees, resulting in underpayments.

3 31. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in
4 Labor Code § 246(1)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to
5 the aggrieved employees in those periods where they earned additional payments, including service
6 charges.

7 32. Due to Defendants' failure to pay overtime, premiums, and paid sick leave at the
8 regular rate and their unlawful time shaving practices, Defendants failed to provide accurate itemized
9 wage statements to the aggrieved employees that included the accurate total gross or net wages earned
10 as all hours were not accounted for and the premiums were depreciated and underpaid in violation of
11 Labor Code 226.

12 33. These violations create derivative liability for failure to pay all wages owed each
13 payday or upon separation of employment. Through this action, Plaintiff seeks to enforce the rights
14 of the State of California, through the LWDA, to enforce the Labor Code and collect civil penalties
15 for Defendants' Labor Code violations.

16 **FIRST CAUSE OF ACTION**

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

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

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

20 34. All outside paragraphs of this Complaint are incorporated into this section.

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

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

27 36. Plaintiff reserves the right to amend, supplement, or add to this description of the
28 aggrieved employees, according to proof.

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

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

11 39. Labor Code section 2699(f) provides: “For all provisions of this code except those for
12 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
13 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
14 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
15 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
16 each subsequent violation.”

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

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

22 42. On or about **September 20, 2023**, Plaintiff paid the requisite PAGA filing fee and
23 provided written notice (by online electronic filing with the LWDA and by certified mail to
24 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
25 the alleged violations.

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

1 44. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
2 written PAGA notice from the LWDA.

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

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

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

- 13 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
14 1197, 1198; IWC Wage Orders.
- 15 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
16 Orders.
- 17 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 18 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
19 1198; IWC Wage Orders.
- 20 e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
21 1198; IWC Wage Orders.
- 22 f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
23 §§ 204, 204b, 210.
- 24 g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
25 Labor Code §§ 201, 202, 203, 256.
- 26 h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 27 i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
28 Wage Orders.

48. 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 penalties and liquidated damages;
- d. For this action to be maintained as a representative action under the PAGA;
- e. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- f. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- g. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 2699, and Code of Civil Procedure section 1021.5; and
- h. For such other relief the Court deems just and proper.

Dated: December 7, 2023

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro

Attorneys for Plaintiff Devon Harper

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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September 20, 2023

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

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

Belmont Park Entertainment LLC
3190 Mission Boulevard
San Diego, CA 92109

PE Management Group Inc.
18029 Calle Ambiente 500
Rancho Santa Fe, CA 92091

San Diego Coaster Company LLC
18029 Calle Ambiente 500
Rancho Santa Fe, CA 92091

- 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 **DEVON HARPER** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

**BELMONT PARK ENTERTAINMENT LLC
SAN DIEGO COASTER COMPANY LLC
PE MANAGEMENT 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 as a Bartender from about May 27, 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 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. When Plaintiff and 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. Instead, Defendants tracked meal period premiums on wage statements, but improperly included them as regular hours worked. An illustrative example of Plaintiff's time records for the pay period from August 16, 2022 to August 31, 2022 is shown below:

#100508 - Devon Harper		Check(46297)		Pay Date: 09/07/2022	
BPE/Boardwalk Re/BeachHouse/Beach House /				Pay Period: 08/16/2022-08/31/2022	
Earnings				Company Paid Benefits - Continued	
	Rate	Hours	Current	YTD	
Cash Tips			3,095.00	13,334.00	
Charge Tip				303.00	
Holiday 2				180.00	
Meal Premi	15.00	3:00	45.00	195.00	
OT				85.51	
Regular	15.00	68:53	1,033.25	3,920.25	
Reimburse			3.00	3.00	
Retro Pay			60.00	60.00	
Gross Pay			4,233.25	18,077.76	
Taxes Withheld					
	Taxable	Taxable YTD	Current	YTD	
FIT	4,233.25	18,077.76	629.98	2,225.67	
FICA	4,233.25	18,077.76	262.46	1,120.82	
MEDI	4,233.25	18,077.76	61.38	262.12	
SIT:CA	4,233.25	18,077.76	187.43	338.10	

Extract from Plaintiff's Wage Statement from the Pay Period 8/16/2022 to 8/31/2022

According to a sum of the time totals provided in the "Timesheet" section of Plaintiff's wage statement, Plaintiff worked approximately a total of 71.80 regular hours. Yet, Plaintiff's wage statement shows Plaintiff was only paid 68 hours and 53 minutes or 68.88 hours.

Plaintiff's wage statement further accounts for 3, 1-hour meal period premiums. When adding the regular paid 68.88 hours and the 3 meal period premium hours the total is 71.88 hours, approximately the same amount of hours Plaintiff actually worked. This shows that Defendants failed to pay the 3 hours in *addition* to the approximate 71.80 hours worked but instead accounted for them in the total hours worked. Under Labor Code 226.7, Defendants should have, but failed to pay Plaintiff the approximate 71.80 regular hours plus an *additional* 3 meal period premium hours at the regular rate of pay.

Further, Defendants failed to pay all meal period premiums at the regular rate of pay because the premiums did not factor in bonuses, commissions, and other types of remuneration including service charges, instead electing to pay aggrieved employees at the base hourly rate, in violation of California law.

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 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 a policy and practice of paying Plaintiff and, on information and belief, the other aggrieved employees less than all the hours worked.

Specifically, Plaintiff’s records show Plaintiff worked a total of approximately 29.67 hours, in the pay period of June 16, 2022, to June 30, 2022, yet Plaintiff was only paid 27 hours and 7 minutes or 27.12 regular hours. As a result, Plaintiff was paid about 2 hours less than what he should have been paid. Defendants engaged in the unlawful practice of time shaving every time they failed to pay Plaintiff and the aggrieved employees for all hours accounted for on their time sheet.

#100508 - Devon Harper					Check(41281)		Pay Date: 07/07/2022		
BPE/Boardwalk Re/BeachHouse/Beach House /					Pay Period: 06/16/2022-06/30/2022				
Earnings					Timesheet				
	Rate	Hours	Current	YTD		Time Off	In	Out	Total
Cash Tips			2,027.00	2,614.00	Fri, 06/17/2022		03:25p	11:08p	8:43
Meal Premi	15.00	3:00	45.00	90.00	Sat, 06/18/2022		04:24p	11:16p	7:52
Regular	15.00	27:07	406.75	945.00	Sun, 06/19/2022		02:50p	08:58p	7:08
Gross Pay			2,478.75	3,649.00	Sat, 06/25/2022		01:49p	08:54p	6:24

Extract from Plaintiff’s Wage Statement from the Pay Period 6/16/2022 to 6/30/2022
Showing Unpaid Regular Hours

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 40 hours in a week, this practice resulted in unpaid overtime.

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 additional remuneration including service charges earned each time there was a private party or event. Unlike tips, which are discretionary under Labor Code section 351, service charges are a non-discretionary, set percentage automatically applied and earned for private parties or special events and therefore should be included in the regular rate of pay. *Compere v. Nusret Miami, LLC* (11th Cir. 2022) 28 F.4th 1180 (holding service charges are not tips and therefore “properly considered part of the [e]mployees’ ‘regular rate of pay’”). When Plaintiff and the aggrieved employees earned overtime in the same pay period they earned a service charge payment, Defendants failed to pay overtime at the regular rate of pay.

Thus, Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during a period in which Plaintiff

and the aggrieved employees earned additional forms of remuneration, Defendant should have (but failed to) pay overtime “at the rate no less than ***one and one-half times 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 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 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 commissions, bonuses, and all other forms of

compensation including service charges. Based on Defendants non-compliant with the regular rate of pay requirement applicable to overtime and meal and rest period premiums, Plaintiff alleges on information and belief that the regular rate 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 warned additional payments, commissions, bonuses, 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 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. When Plaintiff and the other 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 noncompliant rest period.

On information and belief, to the extent that Defendants ever paid a rest period premium to the aggrieved employees Defendants violated Labor Code section 226.7 because premiums were not paid at the regular rate of compensation which would have factored in all forms of remuneration.

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.

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 that were not paid and premiums that were not paid in *addition* to all hours worked. As a result the "gross wages earned" and "net wages earned" listed on his wage statement was an inaccurate reflection of the wages actually earned.

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the correct number of hours works and applicable hourly

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

Cc Plaintiff Devon Harper
Justin Kizy, Deputy General Counsel – jkizy@peminginc.com