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on behalf of herself and on behalf
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[Additional Counsel listed on the following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RAMONDA SHAKIR, on behalf of herself
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

WATERTON RESIDENTIAL, LLC dba
WATERTON RESIDENTIAL, a Delaware
limited liability company; and DOES 1
through 50, inclusive

Defendants.

Case No.: **23STCV30383**

Assigned for All Purposes To:

Hon.

Dept.:

**COMPLAINT FOR REPRESENTATIVE
ACTION FOR PENALTIES UNDER
PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE § 2698 *et seq.* FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code § 245 *et seq.* and 246;
7. Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802;
8. Violation of Labor Code §§ 226(a), 1174; and
9. Violation of Labor Code §§ 203, 204.

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1 Plaintiff RAMONDA SHAKIR (hereinafter “Plaintiff”) on behalf of herself and all other
2 similarly Aggrieved Employees complains of Defendants, and each of them, as follows:

3 **INTRODUCTION**

4 1. This is a Representative Action, pursuant to the Private Attorneys General Act of
5 2004 (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of Plaintiff and similarly situated aggrieved
6 non-exempt employees (“Aggrieved Employees” or “Employees”) who currently work or
7 formerly worked for WATERTON RESIDENTIAL, LLC dba WATERTON RESIDENTIAL, a
8 Delaware limited liability company, and DOES 1 through 50 (all defendants being collectively
9 referred to herein as “Defendants”) during the liability period. From at least one (1) year prior to
10 the filing of this action and at least one (1) year prior to the date Plaintiff began the process of
11 exhausting the administrative requirements pursuant to Labor Code § 2698 *et seq.* on **September**
12 **14, 2023** and continuing to the present (the “liability period”), Defendants have had a consistent
13 policy of failing to pay all wages due to its California Employees during the course of
14 employment and timely upon separation from employment, failing to provide Employees with
15 meal and rest periods, failing to reimburse necessary business expenses, and failing to issue
16 accurately itemized wage statements to its California employees. Plaintiff alleges that Defendants,
17 and each of them, violated various provisions of the California Labor Code and relevant orders of
18 the Industrial Welfare Commission, and seeks redress for these violations.

19 2. Plaintiff is a resident of California, and during the time period relevant to this
20 Complaint, was employed by Defendants as a non-exempt hourly employee based out of
21 Defendants’ office in Los Angeles, California.

22 3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
23 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
24 endured similar violations at the hands of Defendants as the other Aggrieved Employees who
25 served in similar and related positions.

26 4. Plaintiff and the other similarly situated Employees of Defendants consistently
27 worked at Defendants’ behest without being paid all wages due. More specifically, Defendants
28 failed to record accurate time worked, to include shift differentials, incentive pay, non-

1 discretionary and performance-based bonuses and/or commissions in the regular rate used to
2 calculate and pay overtime for Plaintiff and Aggrieved Employees, failed to pay them at the
3 appropriate rates for all hours worked and requiring them to work off the clock. Additionally,
4 Defendants failed to reimburse necessary business expenses, and provided Aggrieved Employees
5 with inaccurate wage statements that prevented them from learning of these unlawful practices.
6 Defendants further failed to accurately record time worked by Plaintiff and the Employees by
7 rounding hours worked to the nearest quarter hour to their detriment. Defendants also failed to
8 provide Aggrieved Employees with lawful meal and rest periods, as Employees were not provided
9 with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks as
10 required by the Labor Code.

11 5. Defendant WATERTON RESIDENTIAL, LLC dba WATERTON
12 RESIDENTIAL, (“Waterton”) is a Delaware limited liability company with its principle executive
13 office in Chicago, Illinois, and has been listed as the employer on the wage statements issued to
14 Plaintiff during the relevant time period. WATERTON lists a California address in Los Angeles,
15 California with the California Secretary of State, and employs Plaintiff and the Aggrieved
16 Employees in Los Angeles County, including at Defendants’ offices and facilities in Los Angeles,
17 California, and throughout California and conducts business throughout California.

18 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure § 410.10. This Action is brought as a PAGA representative action on behalf of similarly
20 situated Aggrieved Employees of Defendants pursuant to California Labor Code § 2698 *et seq.*
21 Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil
22 Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to
23 this lawsuit occurred in the County of Los Angeles and Defendants maintain and operate facilities
24 in Los Angeles, California, thus employing Plaintiff and other Aggrieved Employees in Los
25 Angeles County and in California.

26 7. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
28 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of

1 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
2 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
3 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
4 this Complaint to reflect the true names and capacities of the Defendants designated herein as
5 Does 1 through 50 when their identities become known.

6 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
8 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
9 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
10 all respects as the employers or joint employers of Employees. Defendants, and each of them,
11 exercised control over the wages, hours or working conditions of Employees, or suffered or
12 permitted Employees to work, or engaged, thereby creating a common law employment
13 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
14 employed the Employee Aggrieved Employees.

15 **FACTUAL BACKGROUND**

16 9. Aggrieved Employees, including Plaintiff, are nonexempt employees pursuant to
17 the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt
18 positions at the direction of Defendants in the State of California. Plaintiff and the Aggrieved
19 Employees were either not paid by Defendants for all hours worked or were not paid at the
20 appropriate minimum, regular and overtime rates. Specifically, Defendants failed to pay Plaintiff
21 and the Aggrieved Employees all wages due and owing, including off the clock work, by
22 unlawfully rounding to their detriment or under-recording of hours worked, made unlawful
23 deductions from their pay, failed to provide meal and rest breaks, and failed to furnish accurate
24 wage statements, all in violation of various provisions of the California Labor Code and applicable
25 Wage Orders.

26 10. During the course of Plaintiff and the Aggrieved Employees' employment with
27 Defendants, they were not paid all wages they were owed, including for all work performed and
28 for all overtime hours worked and were forced to work during their meal and rest breaks to keep

1 labor budgets low. Additionally, Plaintiff was consistently required to work “pre-shift” and “post-
2 shift” hours, in excess of her shift in a given work day, for which Plaintiff was not compensated.
3 Specifically, Aggrieved Employees were required to complete trainings at home several times a
4 month after having already clocked out.

5 11. Defendants required the Employee Aggrieved Employees to clock in and out using
6 Defendants’ time clock. The timekeeping system thus permitted Defendants to record clock in and
7 clock out times to the real-time minute. However, rather than paying Plaintiff and the Aggrieved
8 Employees for all hours and minutes they actually worked, Defendants followed a uniform policy
9 and practice of rounding all time entries to the nearest quarter hour (i.e., to the nearest 15 minute
10 time increment), and generally did so to the detriment of the Employees, and these unlawfully
11 rounded time entries were inputted into Defendants’ payroll system from which wage statements
12 and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved
13 Employees only for the hours they were scheduled to work, rather than the hours they were
14 actually under Defendants’ control. Plaintiff contends this policy is not neutral and results, over
15 time, to the detriment of the Aggrieved Employees by systematically under compensating them.

16 12. Defendants had also either failed to maintain timekeeping records for Plaintiff that
17 would permit him to discover the nature and extent of Defendants’ unlawful rounding or has
18 refused to produce them to Plaintiff in response to his timely request to be provided with them.

19 13. Moreover, when the Employees did work overtime they were not compensated
20 at the required and correct rate because Defendants failed to incorporate incentive pay they
21 received into the regular rate of pay used to calculate overtime pay. More specifically, in each pay
22 period, Employees were paid shift differentials and incentive pay and incentive bonuses and/or
23 commissions, as a separate line item on their wage statements, that were non-discretionary and
24 were tied directly to the daily or weekly performance of their jobs. However, contrary to the
25 requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not
26 incorporate the incentive bonuses and/or commissions they paid to Employees into the regular
27 rate of pay Defendants used to calculate and pay overtime to Employees.

28 14. Moreover, Defendants paid Plaintiffs and Employees shift differentials,

1 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon
2 information and belief, Defendants failed to incorporate all remunerations, including shift
3 differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into
4 the calculation of the regular rate of pay for purposes of calculating sick pay. Therefore, during
5 times when Plaintiffs and Employees worked overtime and received shift differentials,
6 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
7 to pay all sick pay by paying a lower overtime rate than required.

8 15. Moreover, Defendants paid Plaintiffs and Employees shift differentials, incentive
9 pay, nondiscretionary commissions, and/or nondiscretionary bonuses. However, upon information
10 and belief, Defendants failed to incorporate all remunerations, including shift differentials,
11 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the
12 calculation of the regular rate of pay for purposes of calculating vacation pay. Therefore, during
13 times when Plaintiffs and Employees worked overtime and received shift differentials,
14 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
15 to pay all vacation pay by paying a lower overtime rate than required. Additionally, Defendant
16 also failed to pay Plaintiff and Employees all earned and accrued vacation pay.

17 16. As a matter of uniform Company policy, Plaintiff and the Aggrieved Employees
18 were required to work during their meal and rest breaks which were not compensated by
19 Defendants in violation of the California Labor Code. Plaintiff and the Aggrieved Employees were
20 also not paid regular wages and overtime for the time they were required to comply with other
21 requirements imposed upon them, which they had to complete while working through their meal
22 and rest breaks and without compensation. As a result, Plaintiff and the Aggrieved Employees
23 worked shifts over eight (8) hours in a day and over forty (40) hours in a work week, but they
24 were not paid at the appropriate overtime rate for all such hours, including by being required to
25 perform work duties and tasks without pay and while off-the-clock due to Defendants' unlawful
26 rounding. As a result, Plaintiff and the Aggrieved Employees worked substantial overtime hours
27 during their employment with Defendants for which they were not compensated, in violation of
28 the California Labor Code, applicable IWC Wage Orders.

1 17. As a result of the above described unlawful rounding and daily work demands and
2 pressures to work through breaks, and the other wage violations they endured at Defendants'
3 hands, Plaintiff and the Aggrieved Employees were not properly paid for all wages earned and for
4 all wages owed to them by Defendants, including when working more than eight (8) hours in any
5 given day and/or more than forty (40) hours in any given week. As a result of Defendants'
6 unlawful policies and practices, Plaintiff and Aggrieved Employees incurred overtime hours
7 worked for which they were not adequately and completely compensated. To the extent
8 applicable, Defendants also failed to pay Plaintiff and the Aggrieved Employees at an overtime
9 rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive work day in a
10 week and overtime payments at the rate of 2 times the regular rate for hours worked over eight (8)
11 on the seventh consecutive work day, as required under the Labor Code, applicable IWC Wage
12 Orders.

13 18. Therefore, from at least one (1) year prior to the filing of this lawsuit and
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay
15 Employees for all hours worked, and failing to pay minimum wages for all time worked, as
16 required by California law. Also, from at least one (1) year prior to the filing of this lawsuit and
17 continuing to the present, Defendants had a consistent policy or practice of failing to pay
18 Employees overtime compensation at correctly calculated premium overtime rates for all hours
19 worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for
20 all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the
21 corresponding sections of IWC Wage Orders.

22 19. Additionally, Defendants failed to provide all the legally required unpaid, off-
23 duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other
24 Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Defendants did
25 not have a policy or practice which provided or recorded all the legally required unpaid, off-duty
26 meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the
27 Aggrieved Employees. Plaintiff and Aggrieved Employees were required to perform work as
28 ordered by Defendants for more than five (5) hours during a shift, but were often required to do so

1 without receiving a meal break. Defendants required all Aggrieved Employees to keep their cell
2 phones on throughout their meal breaks and answer calls should their assistance be required even
3 if during their rest breaks. In fact, as addressed above, Defendants followed a practice of under-
4 reporting hours worked in an effort to ensure that the timekeeping records for Employees reflected
5 a shift of less than six hours when in fact the Employee worked more than six hours in an effort to
6 avoid the meal period requirements under the Labor Code and applicable IWC Wage Orders
7 through an alleged meal period waiver. As a result, Defendants' failure to provide the Plaintiff and
8 Aggrieved Employees with all the legally required off-duty, unpaid meal periods and all the
9 legally required off-duty, paid rest periods is and will be evidenced by Defendants' business
10 records, or lack thereof. From at least one (1) year prior to the filing of this lawsuit and continuing
11 to the present, Defendants have regularly required Employees to work shifts in excess of five (5)
12 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
13 and shifts in excess of ten (10) hours without providing them with second meal periods of not less
14 than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of wages at
15 each Employee's effective hourly rate of pay, for each meal period that Defendants failed to
16 provide or deficiently provided.

17 20. Therefore, for at least one year prior to the filing of this action and through to the
18 present, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were
19 otherwise not provided with the opportunity to take required breaks due to Defendants' policies
20 and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a
21 meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees
22 were not provided with one (1) hour's wages in lieu thereof. Meal period violations thus occurred
23 in one or more of the following manners:

- 24 (a) Aggrieved Employees were not provided full thirty-minute duty free meal
25 periods for work days in excess of five (5) hours and were not
26 compensated one (1) hour's wages in lieu thereof, all in violation of,
27 among others, Labor Code §§ 226.7, 512, and the applicable Industrial
28 Welfare Commission Wage Order(s);

- (b) Aggrieved Employees were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Aggrieved Employees were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Aggrieved Employees were restricted in their ability to take a full thirty-minute meal period.

21. Plaintiff and the Defendants' Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises during rest breaks under Defendants' policies. Defendants required all Aggrieved Employees to keep their cell phones on throughout their rest breaks and answer calls should their assistance be required even if during their rest breaks. Rest period violations therefore arose in one or more of the following manners:

- (a) Aggrieved Employees were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Aggrieved Employees were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Aggrieved Employees were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

22. Additionally, from at least one (1) year prior to the filing of this lawsuit and continuing to the present, Defendants required Plaintiff, and upon information and belief other

1 similarly situated Employees, to incur business expenses in the course of performing their required
2 job duties for Defendants. Specifically, from time to time Employees were required to use their
3 cell phones in performing their daily job duties and were not reimbursed for cell phone usage for
4 business purposes. Additionally, employees were required to use their personal cars to travel
5 between properties and were not reimbursed for mileage. These expenses incurred by Plaintiff and
6 the Aggrieved Employees were necessary and required of them in performing their assigned job
7 duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such
8 necessary expenditures, thus entitling them to reimbursement according to proof as required under
9 Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

10 23. As a result of these illegal policies and practices, Defendants engaged in and
11 enforced the following additional unlawful practices and policies against Plaintiff and the
12 Aggrieved Employees he seeks to represent:

- 13 a. failing to pay all wages owed to Aggrieved Employees who either were discharged,
14 laid off, or resigned in accordance with the requirements of Labor Code §§ 201,
15 202, 203;
- 16 b. failing to pay all wages owed to the Aggrieved Employees twice monthly in
17 accordance with the requirements of Labor Code § 204;
- 18 c. failing to pay Aggrieved Employees all wages owed, including all meal and rest
19 period premium wages; and
- 20 d. failing to maintain accurate records of Aggrieved Employees' earned wages and
21 meal periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the
22 applicable IWC Wage Orders.

23 24. From at least one (1) year prior to the filing of this lawsuit, and continuing to the
24 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
25 itemized wage statements, in writing, as required by California wage-and-hour laws. More
26 specifically, from at least one (1) year prior to the LWDA the wage statements failed to
27 incorporate shift differentials, non-discretionary and performance based bonuses and/or
28 commissions (incentive pay) into the regular rate of pay used to calculate and pay overtime

1 compensation. More specifically, the wage statements also failed to account for unpaid wages and
2 overtime due to off the clock work, namely when Employees were required to work off the clock.
3 Additionally, the wage statements given to Employees failed to accurately account for premium
4 pay for deficiently provided meal periods and rest breaks, as discussed above. In addition, the
5 wage statements are inaccurate and in violation of Labor Code § 226(a) because they do not reflect
6 the proper overtime rate for overtime hours worked which should have been based on the
7 Aggrieved Employees' regular rate of pay. This regular rate of pay should have factored in shift
8 differentials, non-discretionary and performance based bonuses and/or commissions (incentive
9 pay). It did not. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to
10 exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b).

11 25. From at least one (1) year prior to filing this lawsuit and continuing to the
12 present, Defendants have had a consistent policy of denying Aggrieved Employees the right to
13 inspect and receive all of their payroll records, timecards, and personnel records.

14 26. In light of the foregoing, Plaintiff and the Aggrieved Employees bring this action
15 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4,
16 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698,
17 2699, *et seq.* and 2802 and pursuant to the applicable IWC Wage Order provisions and California
18 Code of Regulations, Title 8, section 11000 *et seq.*

19 **PAGA NOTICE AND ALLEGATIONS**

20 27. Plaintiff brings this PAGA representative action on behalf of herself and all
21 others similarly situated Aggrieved Employees employed by Defendants during the liability period
22 pursuant to Labor Code § 2698 *et seq.* Plaintiff and Employees are aggrieved employees as
23 defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint
24 and either were or are employed by the alleged violators, Defendants. Upon information and
25 belief, at all times during the liability period, Plaintiff and the Aggrieved Employees were
26 employees subject to the protections of the California Labor Code and the applicable Industrial
27 Welfare Commission ("IWC") Wage Orders, including IWC Wage Order No. 4-2001 regulating
28 the wages, hours and working conditions in the Professional, Technical, Clerical, Mechanical and

1 Similar Occupations (“Wage Order No. 4”).

2 28. In failing to pay Aggrieved Employees minimum wages and overtime, not
3 providing proper meal and rest periods, failing to reimburse necessary business expenses, failing
4 to provide accurate itemized wage statements, and failing to pay Employees wages upon
5 termination or timely upon resignation, all addressed herein, Defendants failed to timely pay
6 Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204.
7 Defendants also failed to maintain records showing accurate hours worked daily and the wages
8 paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC Wage
9 Orders.

10 29. As such, Plaintiff and the Aggrieved Employees seek wages and penalties under
11 Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included under
12 Labor Code § 2699.5, which includes the penalty provisions, without limitation, based *inter alia*
13 on the following California Labor Code sections: 201, 202, 203, 204, 210, 218.5, 218.6, 226,
14 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198,
15 1199, 2698, 2699, *et seq.*, and 2802.

16 30. More specifically, after complying with the notice procedures of Labor Code §
17 2699.3, Plaintiff asserts as a representative action on behalf of the California Attorney General and
18 the other similarly Aggrieved Employees a PAGA claim for violations of the underlying claims
19 addressed herein and seeking penalties as specified by the applicable corresponding provisions,
20 including as follows:

21 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
22 earned regular pay and minimum wages for regular hours worked and for failure to pay
23 overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a),
24 1197, and 1198, and Sections 2(K), 3(A) and 4 of the applicable IWC Wage Order(s)
25 seeking all civil and statutory penalties available and applicable, and wages, under Labor
26 Code §§ 510, 558, 1194.2, 1197.1, 2699(f)(2), and 2699.5, and also for attorneys’ fees and
27 costs pursuant to Labor Code § 2699(g)(1);

28 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved

1 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit
2 them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu
3 thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A) and 12(B) of
4 the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and
5 applicable, and wages, under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-
6 (3), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code §
7 2699(g)(1);

8 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
9 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements
10 and failure to maintain employment records for Plaintiff and Aggrieved Employees under
11 Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable
12 IWC Wage Order(s) seeking all civil and statutory penalties and wages available and
13 applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for
14 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

15 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including
16 at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201,
17 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and
18 wages, under Labor Code §§ 201, 202, 203, 204, 210, 558, 1197, and 2699(f)(2), and
19 Section 20 of the applicable IWC Wage Order(s), and also for attorneys' fees and costs
20 pursuant to Labor Code § 2699(g)(1);

21 (e) Failure to Pay Sick Time: For Defendants paying sick leave to Aggrieved
22 Employees at a lower rate, in violation of the law seeking all civil penalties available and
23 applicable, and wages, under the Labor Code the applicable IWC Wage Order(s), and also
24 for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

25 (f) Failure to Pay Vacation time: For Defendants paying vacation time to Aggrieved
26 Employees at a lower rate seeking all civil penalties available and applicable, and wages,
27 under the Labor Code the applicable IWC Wage Order(s), and also for attorneys' fees and
28 costs pursuant to Labor Code § 2699(g)(1);

1 (g) Failure to Properly Issue Wages: For Defendants failing to issue proper payment, in
2 violation of the law seeking all civil penalties available and applicable, and wages, under
3 the Labor Code the applicable IWC Wage Order(s), and also for attorneys' fees and costs
4 pursuant to Labor Code § 2699(g)(1);

5 (h) Failure to Produce Requested Employment Records: For Defendants' failure to
6 produce Employment Records in violation of Labor Code §§ 226 and 1198 and seeking
7 the civil and statutory penalties available and applicable under Labor Code § 226, 1194.2,
8 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs
9 pursuant to Labor Code § 2699(g)(1);

10 (i) All Alleged Violations of the IWC Wage Orders: For any above addressed
11 violation of the applicable provisions of the IWC Wage Orders constituting violations of
12 Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and
13 applicable under Labor Code § 2699(f)(2) and for attorneys' fees and costs pursuant to
14 Labor Code § 2699(g)(1).

15 31. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to
16 the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

17 32. As also addressed above, Plaintiffs on behalf of the Aggrieved Employees also
18 seeks the penalties and remedies set forth in Labor Code § 558, which states:

19 (a) Any employer or other person acting on behalf of an employer who
20 violates, or causes to be violated, a section of this chapter or any provision
21 regulating hours and days of work in any order of the Industrial Welfare
22 Commission shall be subject to a civil penalty as follows: (1) For any initial
23 violation, fifty dollars (\$50) for each underpaid employee for each pay
24 period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages. (2) For each subsequent violation,
26 one hundred dollars (\$100) for each underpaid employee for each pay
27 period for which the employee was underpaid in addition to an amount
28 sufficient to recover underpaid wages. (3) Wages recovered pursuant to
this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner
determines that a person had paid or caused to be paid a wage for overtime
work in violation of any provision of this chapter, or any provision
regulating hours and days of work in any order of the Industrial Welfare
Commission, the Labor Commissioner may issue a citation. The
procedures for issuing, contesting, and enforcing judgments for citations

1 or civil penalties issued by the Labor Commissioner for a violation of this
2 chapter shall be the same as those set out in Section 1197.1.

3 (c) The civil penalties provided for in this section are in addition to
4 any other civil or criminal penalty provided by law.

5 33. Plaintiff has exhausted her administrative remedy by sending a certified letter to
6 the LWDA and Defendants postmarked on **September 14, 2023** addressing in detail the specific
7 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
8 to support the alleged violations. Plaintiff then sent a certified amended letter to the LWDA
9 postmarked on **September 28, 2023**. The LWDA has not provided notice of its intent to
10 investigate the alleged violations within 65 calendar days of the postmark date of the letter. As a
11 result, as a matter of law, Plaintiff is entitled to file this Complaint for full compliance and
12 exhaustion of the notice requirements under the PAGA and seeks civil penalty assessments against
13 Defendants as a Representative of the State of California as hereinafter alleged and in accordance
14 with the law, in addition to costs and reasonable attorneys' fees as provided by the PAGA statute.
15 A true and correct copy of the September 14, 2023 and **September 28, 2023** Notice to the LWDA
16 and the Defendants is attached hereto **Exhibit A** and is expressly incorporated into this Complaint
17 as if set forth in full. Plaintiff alleges that the notice period provided by statute has expired and
18 amendment is proper pursuant to Labor Code § 2699.3(a)(2)(C).

19 34. This action has been brought and may properly be maintained as a representative
20 action under the provisions of Labor Code § 2698 *et seq.* seeking civil and statutory penalties and
21 wages based, *inter alia*, on the following claims addressed in detail herein:

- 22 a. Defendants failed to pay Employees minimum wages and wages for all hours
23 worked;
- 24 b. Defendants failed to pay Employees overtime as required under Labor Code § 510;
- 25 c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage
26 Orders, by failing to provide Employees with requisite meal periods or premium
27 pay in lieu thereof;
- 28 d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders,
by failing to authorize and permit Employees to take requisite rest breaks or

provide premium pay in lieu thereof;

- e. Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- f. Defendants failed to pay Employees vacation wages as required under Labor Code § 227.3;
- g. Defendants failed to pay Employees sick pay as required under Labor Code § 245;
- h. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Aggrieved Employees' earned wages and work periods;
- j. Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- k. Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly; and
- l. Defendants failed to reimburse necessary business expenses incurred by Employees in connection with performing their job duties under Labor Code § 2802.

FIRST CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

35. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

36. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a common policy and/practice of misstating Employees time records and failing to pay Plaintiff and Aggrieved Employees minimum wages for all hours worked. Specifically, Plaintiff and Employees were consistently required to work "pre-shift" and "post-shift" hours, in excess of their shift in a given work day for which Employees were not compensated. Moreover, Plaintiff and Employees were required to complete trainings at home for approximately several

1 times a month after having already clocked out.

2 37. Defendants required the Employee Aggrieved Employees to clock in and out using
3 Defendants' time clock. The timekeeping system thus permitted Defendants to record clock in and
4 clock out times to the real-time minute. However, rather than paying Plaintiff and the Aggrieved
5 Employees for all hours and minutes they actually worked, Defendants followed a uniform policy
6 and practice of rounding all time entries to the nearest quarter hour (i.e., to the nearest 15 minute
7 time increment), and generally did so to the detriment of the Employees, and these unlawfully
8 rounded time entries were inputted into Defendants' payroll system from which wage statements
9 and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved
10 Employees only for the hours they were scheduled to work, rather than the hours they were
11 actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over
12 time, to the detriment of the Aggrieved Employees by systematically under compensating them.

13 38. Defendants had also either failed to maintain timekeeping records for Plaintiff that
14 would permit him to discover the nature and extent of Defendants' unlawful rounding or has
15 refused to produce them to Plaintiff in response to his timely request to be provided with them.

16 39. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil penalties
17 and remedies for each Aggrieved Employee for each pay period in the applicable statute of
18 limitations in which the Aggrieved Employee was not paid for all hours worked for each pay
19 period, plus reasonable attorneys' fees and costs.

20 40. The Private Attorneys General Act of 2004 ("PAGA") provides that:
21 ... an aggrieved employee may recover the civil penalty described in
22 subdivision (I) in a civil action pursuant to the procedures specified in
23 Section 2699.3 filed on behalf of himself or herself and other current or
24 former employees against whom one or more of the alleged violations was
25 committed. Any employee who prevails in any action shall be entitled to an
26 award of reasonable attorney's fees and costs. Nothing in this part shall
27 operate to limit an employee's right to pursue or recover other remedies
28 available under state or federal law, either separately or concurrently with
an action taken under this part.

California Labor Code § 2699(g)(1).

41. Plaintiff is an "aggrieved employee" under the PAGA, as she was employed by

1 Defendants during the applicable statutory period and suffered one or more of the California Labor
2 Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all
3 other current and former aggrieved non-exempt employees, as defined above, the civil penalties
4 provided by the PAGA, plus reasonable attorneys' fees and costs.

5 42. Plaintiff, by virtue of the Notice correspondence dated **September 14, 2023** and
6 **September 28, 2023**, attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a
7 representative of the general public to enforce California's labor laws, including without
8 limitation, the penalty provisions identified in California Labor Code § 2699.5. Because the
9 LWDA took no steps within the applicable time period required to intervene, and because
10 Defendants took no corrective actions to remedy the allegations set forth above, Plaintiff, as a
11 representative of the people of the State of California, will seek, and hereby does seek, any and all
12 civil penalties otherwise capable of being collected by the Labor Commission and/or the
13 Department of Labor Standards Enforcement ("DLSE").

14 43. Any civil penalties recovered herein will be distributed in accordance with the
15 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
16 and the LWDA, where applicable. *See* Labor Code § 2699(i).

17 44. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
18 arise from the policies, practices and business acts of Defendants to the extent provided by law as
19 a Representative Action, including reasonable attorneys' fees and costs, and underpayment of
20 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

21 Labor Code § 558 provides in pertinent part:

22 (a) Any employer or other person acting on behalf of an employer who
23 violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows: (1) For any initial
26 violation, fifty dollars (\$50) for each underpaid employee for each pay
27 period for which the employee was underpaid in addition to an amount
28 sufficient to recover underpaid wages. (2) For each subsequent violation,
one hundred dollars (\$100) for each underpaid employee for each pay
period for which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages. (3) Wages recovered pursuant to
this section shall be paid to the affected employee....

1 (c) The civil penalties provided for in this section are in addition to
2 any other civil or criminal penalty provided by law.

3 45. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff and
4 other aggrieved non-exempt employees proper regular pay and minimum wages for regular hours
5 worked and/or overtime premium pay for overtime hours worked during the applicable statutory
6 period.

7 46. Section 4 of IWC Wage Order No. 4 provides in pertinent part: “(A) Every
8 employer shall pay to each employee wages not less than the following: (1) All employers,
9 regardless of the number of employees, shall pay to each employee fifteen dollars and fifty cents
10 (\$15.50) per hour for all hours worked, effective January 1, 2023; (2) Prior to January 1, 2023, any
11 employer who employs 26 or more employees shall pay to each employee wages not less than the
12 following: (a) Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2020;
13 (b) Fourteen dollars (\$14.00) per hour for all hours worked, effective January 1, 2021; and (c)
14 Fifteen dollars (\$15.00) per hour for all hours worked, effective January 1, 2022.;.... (B) Every
15 employer shall pay to each employee, on the established payday for the period involved, not less
16 than the applicable minimum wage for all hours worked in the payroll period, whether the
17 remuneration is measured by time, piece, commission, or otherwise.”

18 47. Section 2(K) of IWC Wage Order No. 4 defines “Hours worked” as “the time
19 during which an employee is subject to the control of an employer, and includes all the time the
20 employee is suffered or permitted to work, whether or not required to do so.”

21 48. In California, employees must be paid at least the then applicable state minimum
22 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
23 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
24 timely pay its employees for all hours worked. Defendants failed to do so.

25 49. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
26 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
27 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

28 50. The minimum wage provisions of California Labor Code are enforceable by private
civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to

1 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
2 overtime compensation applicable to the employee is entitled to recover in a civil action the
3 unpaid balance of the full amount of this minimum wage or overtime compensation, including
4 interest thereon, reasonable attorney's fees and costs of suit."

5 51. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
6 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
7 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
8 Orders, entitle non-exempt employees to an amount equal to or greater than the minimum wage
9 for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate
10 may be used as a credit against a minimum wage obligation.

11 52. In committing these violations of the California Labor Code, Defendants
12 inaccurately recorded, or calculated the correct time worked and consequently underpaid the
13 actual time worked by Plaintiff and other Aggrieved Employees. Defendants acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations. As a result of these violations, Defendant also failed to timely pay all wages earned in
17 accordance with California Labor Code § 1194.

18 53. California Labor Code § 1194.2 also provides for the following remedies: "In any
19 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
20 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
21 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

22 54. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
23 1197.1, Plaintiff and Aggrieved Employees are entitled to recover a penalty of \$100.00 for the
24 initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent
25 failure to pay each employee minimum wages.

26 55. Pursuant to California Labor Code § 1194.2, Plaintiff and Aggrieved Employees
27 are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid
28 and interest thereon.

1 56. Labor Code § 1198 also requires that: “The maximum hours of work and the
2 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
3 standard conditions of labor for employees. The employment of any employee for longer hours
4 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
5 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
6 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
7 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

8 57. Additionally, Labor Code § 1199 provides that: “Every employer or other person
9 acting either individually or as an officer, agent, or employee of another person is guilty of a
10 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)...., who does
11 any of the following: (a) Requires or causes any employee to work for longer hours than those
12 fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to
13 be paid to any employee a wage less than the minimum fixed by an order of the commission....”

14 58. Similarly, Section 20 of IWC Wage Order No. 4 addresses further penalties as
15 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
16 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
17 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
18 underpaid employee for each pay period during which the employee was underpaid in addition to
19 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
20 each underpaid employee for each pay period during which the employee was underpaid in
21 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
22 receive payment of all wages recovered.”

23 59. Defendants have the ability to pay minimum wages for all time worked and have
24 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
25 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

26 60. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs

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

4 61. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
5 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
6 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
7 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
8 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204,... 221,
9 ...510, 512,... 1194, 1197, 1197.1 and 1198...1199”, and these provisions of the Code allow for
10 recovery of civil penalties pursuant to the PAGA in this action.

11 62. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
12 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
13 employees applicable minimum wages and contractually agreed upon wages for all hours they
14 were required to work and remain under Defendants’ control.

15 63. As a direct and proximate result of the Defendants’ unlawful acts, as alleged in
16 detail herein, Plaintiff and other aggrieved non-exempt employees have been deprived, and
17 continue to be deprived, of minimum wages and all wages owed for all hours they worked.

18 64. As such, Defendants are liable for PAGA penalties resulting from their failure to
19 provide Plaintiff and the other Aggrieved Employees minimum wages and all wages owed for all
20 hours worked. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
21 representative action, all civil and statutory penalties authorized for violations of California Labor
22 Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(G), 4, and 20 of the applicable
23 IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable,
24 and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also
25 attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

26 65. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For
27 the purposes of this cause of action, recovery of civil penalties will include the recovery of
28 underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and

1 subject to Court approval.

2 **SECOND CAUSE OF ACTION**

3 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES AND**
4 **OVERTIME UNDER LABOR CODE § 510**

5 **(Against All Defendants)**

6 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 67. California Labor Code § 1194 provides that “any employee receiving less than the
9 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
10 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
11 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
12 may be maintained directly against the employer in an employee’s name without first filing a
13 claim with the Division of Labor Standards and Enforcement.

14 68. By their conduct, as set forth herein, Defendants violated California Labor Code §
15 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
16 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
17 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
18 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
19 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
20 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
21 paying Employees wages for all hours worked, including by requiring off the clock work, and by
22 failing to incorporate the incentive bonuses and/or commissions paid to the Employees into the
23 regular rate used to calculate the wage rate, and overtime wage rate by under-reporting actual
24 hours worked, including by unlawfully rounding down and under-reporting actual hours worked,
25 as addressed above.

26 69. Similar to Labor Code § 510, Section 3(A) of IWC Wage Order No. 4 also
27 provides: “(A) Daily Overtime-General Provisions (1) The following overtime provisions are
28 applicable to employees 18 years of age or over... Such employees shall not be employed more

1 than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
2 receives one and one half (1 1/2) times such employee's regular rate of pay for all hours worked
3 over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
4 beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible
5 provided the employee is compensated for such overtime at not less than: (a) One and one-half
6 (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up
7 to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh
8 (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate of pay
9 for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of
10 eight (8) hours on the seventh (7th) consecutive day of work in a workweek..."

11 70. Defendants had a consistent policy of violating these provisions by not paying
12 Employees wages for all hours worked, including requiring off the clock work as addressed,
13 unlawfully rounding down, and under-reporting actual hours worked. Defendants also paid shift
14 differentials, incentive pay, non-discretionary and performance based bonuses and/or commissions
15 to Employees, but failed to correctly calculate the regular rate of pay used to pay overtime wages
16 to Plaintiff and the Aggrieved Employees as alleged in the **September 14, 2023** and **September**
17 **28, 2023** Notice to the LWDA.

18 71. Defendants had a consistent policy of violating these provisions by not paying
19 Employees wages for all hours worked, including requiring off the clock work and under-reporting
20 actual hours worked.

21 72. Defendants, and each of them, have intentionally and improperly required Plaintiff
22 and the Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid
23 paying Plaintiff and the Aggrieved Employees all earned and owed straight time and overtime and
24 double time wages and other benefits, in violation of the California Labor Code, the California
25 Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
26 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
27 and other similarly situated non-exempt employees to work through meal periods when they were
28 required to be clocked out or to otherwise work off the clock to complete their daily job duties.

1 Therefore, Employees were not properly compensated, nor were they paid overtime rates for hours
2 worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on
3 information and belief, Defendants did not make available to Employees a reasonable protocol for
4 correcting time records when Employees worked overtime hours or to fix incorrect time entries.
5 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
6 Aggrieved Employees to work through meal periods when they were required to be clocked out or
7 to otherwise work off the clock to complete their daily job duties, and by failing to incorporate
8 shift differentials, incentive pay, non-discretionary bonuses and/or commissions into the regular
9 rate used by Defendants to calculate and pay overtime compensation as alleged in the **September**
10 **14, 2023** and **September 28, 2023** Notice to the LWDA.

11 73. Defendants' failure to pay Plaintiff and the Aggrieved Employees the unpaid
12 balance of regular wages owed and overtime compensation, as required by California law, violates
13 the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

14 74. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil penalties
15 and remedies for each Aggrieved Employee for each pay period in the applicable statute of
16 limitations in which the Aggrieved Employee was not paid at the correct overtime rate for all
17 hours worked for each pay period, plus reasonable attorneys' fees and costs.

18 75. The Private Attorneys General Act of 2004 ("PAGA") provides that:
19 ... an aggrieved employee may recover the civil penalty described in
20 subdivision (I) in a civil action pursuant to the procedures specified in
21 Section 2699.3 filed on behalf of himself or herself and other current or
22 former employees against whom one or more of the alleged violations was
23 committed. Any employee who prevails in any action shall be entitled to an
24 award of reasonable attorney's fees and costs. Nothing in this part shall
25 operate to limit an employee's right to pursue or recover other remedies
26 available under state or federal law, either separately or concurrently with
27 an action taken under this part.

28 California Labor Code § 2699(g)(1).

76. Plaintiff is an "aggrieved employee" under the PAGA, as he was employed by
Defendants during the applicable statutory period and suffered one or more of the California Labor
Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all

1 other current and former aggrieved non-exempt employees, as defined above, the civil penalties
2 provided by the PAGA, plus reasonable attorneys' fees and costs.

3 77. Plaintiff, by virtue of the Notice correspondence dated **September 14, 2023** and
4 **September 28, 2023**, attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a
5 representative of the general public to enforce California's labor laws, including without
6 limitation, the penalty provisions identified in California Labor Code § 2699.5. Because the
7 LWDA took no steps within the applicable time period required to intervene, and because
8 Defendants took no corrective actions to remedy the allegations set forth above, Plaintiff, as a
9 representative of the people of the State of California, will seek, and hereby does seek, any and all
10 civil penalties otherwise capable of being collected by the Labor Commission and/or the
11 Department of Labor Standards Enforcement ("DLSE").

12 78. Any civil penalties recovered herein will be distributed in accordance with the
13 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
14 and the LWDA, where applicable. *See* Labor Code § 2699(i).

15 79. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
16 arise from the policies, practices and business acts of Defendants to the extent provided by law as
17 a Representative Action, including reasonable attorneys' fees and costs, and underpayment of
18 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
19 Labor Code § 558 provides in pertinent part:

20 (a) Any employer or other person acting on behalf of an employer who
21 violates, or causes to be violated, a section of this chapter or any provision
22 regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial
24 violation, fifty dollars (\$50) for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount
26 sufficient to recover underpaid wages. (2) For each subsequent violation,
27 one hundred dollars (\$100) for each underpaid employee for each pay
28 period for which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages. (3) Wages recovered pursuant to
this section shall be paid to the affected employee....

(c) The civil penalties provided for in this section are in addition to
any other civil or criminal penalty provided by law.

80. Section 2(K) of IWC Wage Order No. 4 defines "Hours worked" as "the time

1 during which an employee is subject to the control of an employer, and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.”

3 81. In California, employees must be paid at least the then applicable state minimum
4 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
5 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
6 timely pay its employees for all hours worked. Defendants failed to do so. Defendants’ failure to
7 pay compensation in a timely fashion also constituted a violation of California Labor Code § 204,
8 which requires that all wages shall be paid semimonthly. During the liability period, Defendants
9 have failed to pay all wages and overtime compensation earned by Aggrieved Employees, and
10 each such failure to make a timely payment of compensation to Employees constitutes a separate
11 violation of California Labor Code § 204.

12 82. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
13 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
14 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

15 83. The minimum wage provisions of California Labor Code are enforceable by private
16 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
17 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
18 overtime compensation applicable to the employee is entitled to recover in a civil action the
19 unpaid balance of the full amount of this minimum wage or overtime compensation, including
20 interest thereon, reasonable attorney’s fees and costs of suit.”

21 84. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
22 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
23 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
24 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
25 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
26 be used as a credit against a minimum wage obligation.

27 85. In committing the above addressed violations of the California Labor Code,
28 Defendants inaccurately recorded, or required Plaintiff and the Aggrieved Employees to input

1 times that did not reflect their actual hours worked, or calculated the incorrect time worked and
2 consequently underpaid the actual time worked by Plaintiff and other Aggrieved Employees.
3 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
4 in violation of the California Labor Code, the Industrial Welfare Commission requirements and
5 other applicable laws and regulations. As a result of these violations, Defendant also failed to
6 timely pay all wages earned in accordance with California Labor Code § 1194.

7 86. California Labor Code § 1194.2 also provides for the following remedies: “In any
8 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
9 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
10 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

11 87. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
12 1197.1, Plaintiff and Aggrieved Employees are entitled to recover a penalty of \$100.00 for the
13 initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent
14 failure to pay each employee minimum wages.

15 88. Pursuant to California Labor Code § 1194.2, Plaintiff and Aggrieved Employees
16 are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid
17 and interest thereon.

18 89. Labor Code § 1198 also requires that: “The maximum hours of work and the
19 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
20 standard conditions of labor for employees. The employment of any employee for longer hours
21 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
22 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
23 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
24 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

25 90. Additionally, Labor Code § 1199 provides that: “Every employer or other person
26 acting either individually or as an officer, agent, or employee of another person is guilty of a
27 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)...., who does
28 any of the following: (a) Requires or causes any employee to work for longer hours than those

1 fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to
2 be paid to any employee a wage less than the minimum fixed by an order of the commission....”

3 91. Similarly, Section 20 of IWC Wage Order No. 4 addresses further penalties as
4 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
5 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
6 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
7 underpaid employee for each pay period during which the employee was underpaid in addition to
8 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
9 each underpaid employee for each pay period during which the employee was underpaid in
10 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
11 receive payment of all wages recovered.”

12 92. Defendants have the ability to pay overtime wages for all time worked and have
13 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
14 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

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

21 94. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
22 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
23 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
24 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
25 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204,...510,
26 512,... 1194, 1197, 1197.1 and 1198...1199” among the provisions of the Code that allow for
27 recovery of civil penalties pursuant to the PAGA.

28 95. Defendants’ conduct, as alleged herein, violates the aforementioned regulations

1 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
2 employees applicable minimum wages and contractually agreed upon wages for all hours they
3 were required to work and remain under Defendants' control.

4 96. As a direct and proximate result of the Defendants' unlawful acts, as alleged in
5 detail herein, Plaintiff and other aggrieved non-exempt employees have been deprived, and
6 continue to be deprived, of overtime wages owed for all hours they worked.

7 97. As such, Defendants are liable for PAGA penalties resulting from their failure to
8 timely provide Plaintiff and the other Aggrieved Employees overtime and premium wages for all
9 hours worked. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
10 representative action, all civil and statutory penalties authorized for violations of California Labor
11 Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(G), 4, and 20 of the applicable
12 IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable,
13 and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also
14 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

15 98. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For
16 the purposes of this cause of action, recovery of civil penalties will include the recovery of
17 underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and
18 subject to Court approval.

19 **THIRD CAUSE OF ACTION**

20 **CIVIL PENALTIES UNDER THE PAGA FOR MEAL-PERIOD LIABILITY**

21 **UNDER LABOR CODE §§ 512, 226.7**

22 **(Against All Defendants)**

23 99. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 100. Employees regularly worked shifts greater than five (5) hours and in some
26 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, an employer may not employ
27 someone for a shift of more than five (5) hours without providing him or her with a meal period of
28 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or

1 her with a second meal period of not less than thirty (30) minutes.

2 101. Similar to Labor Code § 512, Section 11(A)-(D) of Wage Order No. 4 provides
3 that: “(A) No employer shall employ any person for a work period of more than five (5) hours
4 without a meal period of not less than 30 minutes, except that when a work period of not more
5 than six (6) hours will complete the day’s work the meal period may be waived by mutual consent
6 of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute
7 meal period, the meal period shall be considered an “on duty” meal period and counted as time
8 worked.... (B) If an employer fails to provide an employee a meal period in accordance with the
9 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
10 employee’s regular rate of compensation for each workday that the meal period is not
11 provided....”

12 102. Defendants failed to provide Employees with meal periods as required under the
13 Labor Code. Employees were often required to work or to otherwise remain under Defendants’
14 control during meal periods, or Defendants provided them after Employees worked beyond the
15 fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work
16 demands and requirements. Defendants required all Aggrieved Employees to keep their cell
17 phones on throughout their rest breaks and answer calls should their assistance be required even if
18 during their meal breaks. Furthermore, upon information and belief, on the occasions when
19 Employees worked more than ten (10) hours in a given shift, they did so without receiving a
20 second uninterrupted thirty (30) minute meal period, as required by law.

21 103. Defendants thus failed to provide Plaintiff and the Aggrieved Employees with meal
22 periods as required by the Labor Code, including by not providing them with the opportunity to
23 take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them
24 to perform work during breaks.

25 104. Moreover, Defendants failed to compensate Employees for each meal period not
26 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
27 applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a
28 meal period in accordance with this section, the employer shall pay the employee one (1) hour of

1 pay at the employee's regular rate of compensation for each workday that the meal period is not
2 provided. Defendants failed to compensate Employees for each meal period not provided or
3 inadequately provided, as required under Labor Code § 226.7. Additionally, as detailed above,
4 when Defendants did pay meal period premiums, they did so at the Employees' standard rate of
5 pay without factoring in all forms of remuneration/compensation including shift differentials,
6 nondiscretionary bonuses or by otherwise incorrectly calculating the regular rate.

7 105. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff and
8 other aggrieved non-exempt employees lawful off-duty unpaid meal periods, as well as
9 corresponding premium pay for denied meal periods, during the applicable statutory period.

10 106. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
11 policies, practices and business acts of Defendants to the extent provided by law as a
12 Representative Action, including reasonable attorneys' fees and costs, and underpayment of
13 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

14 Labor Code § 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any provision
17 regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial
19 violation, fifty dollars (\$50) for each underpaid employee for each pay
20 period for which the employee was underpaid in addition to an amount
21 sufficient to recover underpaid wages. (2) For each subsequent violation,
22 one hundred dollars (\$100) for each underpaid employee for each pay
23 period for which the employee was underpaid in addition to an amount
24 sufficient to recover underpaid wages. (3) Wages recovered pursuant to
25 this section shall be paid to the affected employee....

26 (c) The civil penalties provided for in this section are in addition to
27 any other civil or criminal penalty provided by law.

28 107. Section 2(K) of IWC Wage Order No. 4 defines "Hours worked" as "the time
during which an employee is subject to the control of an employer, and includes all the time the
employee is suffered or permitted to work, whether or not required to do so."

108. Labor Code § 1198 also requires that: "The maximum hours of work and the
standard conditions of labor fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any employee for longer hours

1 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

2 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
3 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
4 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

5 109. Premium pay for denied lawful meal and rest periods is considered a “wage” rather
6 than a penalty. *See Murphy v. Kennefth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114.

7 110. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
8 arise from the policies, practices, and business acts of Defendants to the extent provided by law as
9 a Representative Action, including reasonable attorneys’ fees and costs, and underpayment of
10 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

11 111. Upon information and belief, Plaintiff and other aggrieved non-exempt employees
12 did not enter into legally binding written agreements with Defendants agreeing to “on-duty” meal
13 periods, or waiving “off duty” meal periods. Nor does the nature of their work prevent the
14 Aggrieved Employees from being relieved of all duties during meal periods. To the contrary. Any
15 inability to take uninterrupted off-duty meal periods was, and is, attributable solely to Defendants’
16 own insufficient staffing models, rather than the general nature of the work performed by Plaintiff
17 and other Aggrieved Employees.

18 112. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
19 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
20 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
21 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation.”

24 113. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
25 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
26 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
27 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
28 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7,

1 ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil
2 penalties pursuant to the PAGA.

3 114. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
4 because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt
5 employees with lawful uninterrupted off-duty meal periods throughout the applicable statutory
6 period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper
7 premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were
8 denied an unpaid, off-duty 30-minute meal period.

9 115. As such, Defendants are liable for PAGA penalties resulting from their failure to
10 provide Plaintiff and other aggrieved non-exempt employees lawful meal periods and the
11 corresponding meal period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby
12 seeks through this Representative Action, all civil and statutory penalties authorized for violations
13 of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 11(A)-(D) of the applicable
14 IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable
15 under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and 2699(f)(2), and also
16 for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

17 116. Aggrieved employees may recover penalties for denied meal periods under the
18 PAGA, as the civil penalty under California Labor Code 558 applies to any provision regulating
19 hours and days of work in any Order, and Plaintiff has fully complied with procedures specified in
20 Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will
21 therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3),
22 in an amount according to proof and subject to Court approval.

23 **FOURTH CAUSE OF ACTION**

24 **PENALTIES UNDER THE PAGA FOR REST-BREAK LIABILITY UNDER**
25 **LABOR CODE §§ 226.7, 512**
26 **(Against All Defendants)**

27 117. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 118. Section 12(A)-(B) of IWC Wage Order No. 4 instructs that: “(A) Every employer
2 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
3 in the middle of each work period. The authorized rest period time shall be based on the total
4 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
5 thereof. However, a rest period need not be authorized for employees whose total daily work time
6 is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours
7 worked for which there shall be no deduction from wages. (B) If an employer fails to provide an
8 employee a rest period in accordance with the applicable provisions of this order, the employer
9 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
10 each work day that the rest period is not provided.”

11 119. Labor Code § 226.7 further instructs that: “(b) An employer shall not require an
12 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
13 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission,... (c) If
14 an employer fails to provide an employee a meal or rest or recovery period in accordance with a
15 state law,... the employer shall pay the employee one additional hour of pay at the employee’s
16 regular rate of compensation for each workday that the meal or rest or recovery period is not
17 provided. (d) A rest or recovery period mandated pursuant to a state law,... shall be counted as
18 hours worked, for which there shall be no deduction from wages....”

19 120. Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders thus
20 provide that employers must authorize and permit all employees to take rest periods at the rate of
21 ten (10) minutes net rest time per four (4) work hours.

22 121. Employees consistently worked consecutive four (4) hour shifts and were generally
23 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
24 permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order,
25 Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive
26 four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks of not less
27 than ten (10) minutes for each consecutive four (4) hour shift. Employees were often required to
28 work or to otherwise remain under Defendants’ control during rest periods, and had breaks

1 provided untimely as a result of the above described off the clock work. Defendants required all
2 Aggrieved Employees to keep their cell phones on throughout their rest breaks and answer calls
3 should their assistance be required even if during their rest breaks. Defendants, and each of them,
4 have therefore intentionally and improperly denied rest periods to Plaintiff and the Aggrieved
5 Employees in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC
6 Wage Orders. Additionally, as detailed above, when Defendants did pay meal period premiums,
7 they did so at the Employees' standard rate of pay without factoring in all forms of
8 remuneration/compensation including shift differentials, incentive pay, nondiscretionary bonuses
9 or by otherwise incorrectly calculating the regular rate.

10 122. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
11 policies, practices and business acts of Defendants to the extent provided by law as a
12 Representative Action, including reasonable attorneys' fees and costs, and underpayment of
13 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

14 Labor Code § 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any provision
17 regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial
19 violation, fifty dollars (\$50) for each underpaid employee for each pay
20 period for which the employee was underpaid in addition to an amount
21 sufficient to recover underpaid wages. (2) For each subsequent violation,
22 one hundred dollars (\$100) for each underpaid employee for each pay
23 period for which the employee was underpaid in addition to an amount
24 sufficient to recover underpaid wages. (3) Wages recovered pursuant to
25 this section shall be paid to the affected employee....

26 (c) The civil penalties provided for in this section are in addition to
27 any other civil or criminal penalty provided by law.

28 123. Section 2(K) of IWC Wage Order No. 4 defines "Hours worked" as "the time
during which an employee is subject to the control of an employer, and includes all the time the
employee is suffered or permitted to work, whether or not required to do so."

124. Labor Code § 1198 also requires that: "The maximum hours of work and the
standard conditions of labor fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any employee for longer hours

1 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

2 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
3 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
4 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

5 125. Premium pay for denied lawful meal and rest periods is considered a “wage” rather
6 than a penalty. *See Murphy v. Kennefth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114.

7 126. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
8 policies, practices, and business acts of Defendants to the extent provided by law as a
9 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of wages
10 as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

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

17 128. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
18 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
19 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
20 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
21 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7,
22 ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil
23 penalties pursuant to the PAGA.

24 129. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
25 because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt
26 employees with lawful uninterrupted off-duty, net ten-minute rest periods throughout the
27 applicable statutory period. Defendants also systematically denied Plaintiff and other Aggrieved
28 Employees proper premium pay at the rate of one hour of pay at their regular pay rates for each

1 work shift they were denied one of their lawfully entitled rest periods.

2 130. As such, Defendants are liable for PAGA penalties resulting from their failure to
3 provide Plaintiff and other aggrieved non-exempt employees lawful rest periods and the
4 corresponding rest period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby
5 seeks through this Representative Action, all civil and statutory penalties authorized for violations
6 of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 12(A)-(B) of the applicable
7 IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable
8 under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and 2699(f)(2), and also
9 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

10 131. Aggrieved employees may recover penalties for denied rest periods under the
11 PAGA, as the civil penalty under California Labor Code 558 applies to any provision regulating
12 hours and days of work in any Order, and Plaintiff has fully complied with procedures specified in
13 Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will
14 therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3),
15 in an amount according to proof and subject to Court approval.

16 **FIFTH CAUSE OF ACTION**

17 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY VACATION WAGES**

18 **(Against All Defendants)**

19 132. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 133. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
22 employment policy provides for paid vacation and an employee is terminated without having
23 taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate
24 in accordance with said contract of employment or policy respecting eligibility or time served.

25 134. Defendants paid shift differentials, nondiscretionary commissions, incentive pay,
26 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
27 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.
28 Additionally, Defendant also failed to pay Plaintiff and Aggrieved Employees all earned and

1 accrued vacation pay.

2 135. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
3 representative action, all civil and statutory penalties authorized for violations of California Labor
4 Code and the applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties
5 available and applicable, and wages, and also attorneys' fees and costs pursuant to Labor Code §
6 2699(g)(1).

7 **SIXTH CAUSE OF ACTION**
8 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO COMPLY WITH**
9 **LABOR CODE § 245 *ET SEQ.* AND 246**
10 **(Against All Defendants)**

11 136. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 137. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
14 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
15 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
16 with the pay calculation under California Labor Code § 246(1).

17 138. Defendants paid shift differentials, nondiscretionary commissions, incentive pay,
18 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
19 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
20 calculating the amount of paid sick time due when sick time is used according to the requirements
21 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
22 rate, in violation of the law.

23 139. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
24 representative action, all civil and statutory penalties authorized for violations of California Labor
25 Code and the applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties
26 available and applicable, and wages, and also attorneys' fees and costs pursuant to Labor Code §
27 2699(g)(1).

28 ///

SEVENTH CAUSE OF ACTION
PENALTIES UNDER THE PAGA FOR FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES UNDER LABOR CODE § 2802
(Against All Defendants)

140. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

141. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work related expenses they incurred in performing their daily job duties, as addressed above, and such expenses were necessary for performing those duties. Specifically, Plaintiff and the Aggrieved Employees were required to use their cell phones in performing their daily job duties and were not reimbursed for cell phone usage for business purposes. Additionally, employees were required to use their personal cars to travel between properties and were not reimbursed for mileage. Plaintiff and the Aggrieved Employees were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

142. Labor Code § 2802 provides that: “(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer,... (b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss. (c) For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section....”

143. Defendants’ knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Aggrieved Employees resulted in damages and loses

1 because, among other things, Defendants did not inform employees of their right to be reimbursed
2 for those work related expenses. As Defendants failed to inform and misled Plaintiff and the
3 Aggrieved Employees with regard to their rights, Plaintiff and the Aggrieved Employees were led
4 to believe that incurring those lawful and necessary expenses was an expected and essential
5 function of their employment with Defendants and that failure to incur those expenses would have
6 adverse consequences on their employment.

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

13 145. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
14 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
15 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
16 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
17 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 2802...”
18 among the provisions of the Code that allow for recovery of civil penalties pursuant to the PAGA.

19 146. As such, Defendants are liable for PAGA penalties resulting from their failure to
20 reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly,
21 Plaintiff is entitled to recover, and hereby seeks through this Representative Action, all civil and
22 statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and
23 Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory
24 penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys’
25 fees and costs pursuant to Labor Code § 2699(g)(1).

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1 **EIGHTH CAUSE OF ACTION**

2 **PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
3 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE § 226(a) AND KEEP**
4 **ACCURATE PAYROLL RECORDS UNDER LABOR CODE § 1174**

5 **(Against All Defendants)**

6 147. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 148. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff and
9 the other Aggrieved Employees accurate itemized wage statements during the applicable statutory
10 period.

11 149. California Labor Code § 226(a) requires an employer to furnish each of his or her
12 employees with an accurate, itemized statement in writing showing the gross and net earnings,
13 total hours worked, and the corresponding number of hours worked at each hourly rate; these
14 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
15 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
16 statements may be given to the employee separately from the payment of wages; in either case the
17 employer must give the employee these statements twice a month or each time wages are paid.

18 150. Similarly, Sections 7(A)-(B) of IWC Wage Order No. 4 provide: "(A) Every
19 employer shall keep accurate information with respect to each employee including the following:
20 (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18
21 years, and designation as a minor. (3) Time records showing when the employee begins and ends
22 each work period. Meal periods, split shift intervals and total daily hours worked shall also be
23 recorded. Meal periods during which operations cease and authorized rest periods need not be
24 recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other
25 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
26 applicable rates of pay. This information shall be made readily available to the employee upon
27 reasonable request. (6) When a piece rate or incentive plan is in operation, piece rates or an
28 explanation of the incentive plan formula shall be provided to employees. An accurate production

1 record shall be maintained by the employer. (B) Every employer shall semimonthly or at the time
2 of each payment of wages furnish each employee, either as a detachable part of the check, draft, or
3 voucher paying the employee's wages, or separately, an itemized statement in writing showing:
4 (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the
5 name of the employee or the employee's social security number; and (4) the name of the
6 employer, provided all deductions made on written orders of the employee may be aggregated and
7 shown as one item."

8 151. Sections 7(C) of IWC Wage Order No. 4 further requires that: "All required records
9 shall be in the English language and in ink or other indelible form, properly dated, showing month,
10 day, and year and shall be kept on file by the employer for at least three (3) years at the place of
11 employment or at a central location within the State of California. An employee's records shall be
12 available for inspection by the employee upon reasonable request."

13 152. Labor Code § 226.3 also instructs that: "Any employer who violates subdivision
14 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
15 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
16 employee for each violation in a subsequent citation, for which the employer fails to provide the
17 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
18 Section 226. The civil penalties provided for in this section are in addition to any other penalty
19 provided by law."

20 153. Defendants failed to provide Employees with accurate itemized wage statements
21 in writing, as required by the Labor Code. The wage statements given to Employees failed to
22 accurately account for wages, overtime, and premium pay for deficient meal periods and rest
23 breaks. More specifically, the wage statements failed to incorporate shift differentials, non-
24 discretionary and performance based bonuses and/or commissions (incentive pay) into the regular
25 rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements
26 given to Employees, by Defendants, failed to include the above requirements enumerated above.
27 Employees' wage statements did not include: the total hours worked in violation of Labor Code §
28 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay

1 period and the corresponding number of hours worked at each such rate in violation of Labor Code
2 § 226 (a)(9). The wage statements provided to Employees were confusing and required
3 Employees to engage in discovery and refer to outside sources to verify whether their pay was
4 correct and potentially resulting in a miscalculation by the Aggrieved Employees. The wage
5 statements also failed to account for unpaid wages and overtime due to off the clock work, namely
6 when Employees were required to boot up their computers prior to logging into the timekeeping
7 system and working with Defendants' clients before they clocked in and clocked out for the day.
8 Additionally, the wage statements given to Employees failed to accurately account for premium
9 pay for deficiently provided meal periods and rest breaks, as discussed above. Throughout the
10 liability period, Defendants intentionally failed to furnish to Plaintiff and the Aggrieved
11 Employees, upon each payment of wages, itemized statements accurately showing: (1) gross
12 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
13 and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
15 and only the last four digits of his or her social security number or an employee identification
16 number other than a social security number, (8) the name and address of the legal entity that is the
17 employer and (9) all applicable hourly rates in effect during the pay period and the corresponding
18 number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,
19 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
20 Plaintiff and the Aggrieved Employees with such timely and accurate wage and hour statements.

21 154. Plaintiff and the Aggrieved Employees suffered injury as a result of Defendants'
22 knowing and intentional failure to provide them with the wage and hour statements as required by
23 law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e),
24 as the Defendants have failed to provide a wage statement, failed to provide accurate and complete
25 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and
26 the Plaintiff and Aggrieved Employees cannot promptly and easily determine from the wage
27 statement alone one or more of the following: (i) The amount of the gross wages or net wages paid
28 to the employee during the pay period or any of the other information required to be provided on

1 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a),
2 (ii) Which deductions the employer made from gross wages to determine the net wages paid to the
3 employee during the pay period, (iii) The name and address of the employer and, (iv) The name of
4 the employee and only the last four digits of his or her social security number or an employee
5 identification number other than a social security number. For purposes of Labor Code § 226(e)
6 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
7 able to readily ascertain the information without reference to other documents or information.

8 155. Therefore, as a direct and proximate cause of Defendants’ violations of Labor Code
9 § 226(a), Employees suffered injuries, including among other things confusion over whether they
10 received all wages owed them and the total numbers of hours they worked in a pay period, the
11 difficulty and expense involved in reconstructing pay records, and forcing them to make
12 mathematical computations to analyze whether the wages paid in fact compensated them correctly
13 for all hours worked. Labor Code § 226(e)(1) further instructs that: ”An employee suffering injury
14 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
15 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
16 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
17 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
18 is entitled to an award of costs and reasonable attorney’s fees.”

19 156. In addition to these statutory penalties under Section 226(e), Plaintiff also seeks
20 civil penalties under the PAGA against Defendants for providing inaccurate wage statements and
21 also for failure to maintain accurate Employee records during the applicable statutory period.

22 157. To this end, Labor Code § 1174 provides that: “Every person employing labor in
23 this state shall:....(c) Keep a record showing the names and addresses of all employees employed
24 and the ages of all minors. (d) Keep, at a central location in the state or at the plants or
25 establishments at which employees are employed, payroll records showing the hours worked daily
26 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece
27 rate paid to, employees employed at the respective plants or establishments. These records shall be
28

1 kept in accordance with rules established for this purpose by the commission, but in any case shall
2 be kept on file for not less than three years...”

3 158. Labor Code § 1174.5 further provides that: “Any person employing labor who
4 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
5 complete records required by subdivision (d) of Section 1174, or to allow any member of the
6 commission or employees of the division to inspect records pursuant to subdivision (b) of Section
7 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

8 159. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
9 policies, practices and business acts of Defendants to the extent provided by law as a Representative
10 Action, including reasonable attorneys’ fees and costs, and underpayment of wages as permitted
11 by Labor Code § 558, as a separate penalty provided by the PAGA statute.

12 160. As alleged in more detail above, Defendants violated the above statutes by failing
13 to maintain accurate payroll records showing the hours worked daily by, and the wages paid to,
14 Plaintiff and other aggrieved non-exempt employees. Defendants’ payroll records pertaining to
15 Plaintiff and other aggrieved non-exempt employees fail to accurately reflect all regular and
16 overtime hours worked, overtime hourly rates, actual gross wages and net wages earned, meal
17 periods, and premium wages owed for denied lawful meal and rest periods.

18 161. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
19 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
20 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
21 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation.”

24 162. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
25 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
26 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
27 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
28 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 226,...

1 subdivisions (c) and (d) of Section 1174,... 1198,...1199,...” among the provisions of the Code
2 that allow for recovery of civil penalties pursuant to the PAGA.

3 163. Labor Code § 1198 also requires that: “The maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees. The employment of any employee for longer hours
6 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
7 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
8 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
9 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

10 164. As such, Defendants are liable for PAGA penalties resulting from their failure to
11 provide accurate itemized wage statements to Plaintiff and the Aggrieved Employees and failure
12 to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
13 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s),
14 and Plaintiff seeks all civil and statutory penalties and wages available and applicable under Labor
15 Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys’ fees and costs pursuant
16 to Labor Code § 2699(g)(1).

17 165. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For
18 the purposes of this cause of action, recovery of civil penalties will therefore also include the
19 recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3).

20 **NINTH CAUSE OF ACTION**

21 **PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES**

22 **OWED IN VIOLATION OF LABOR CODE §§ 203, 204**

23 **(Against All Defendants)**

24 166. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 167. Plaintiff and numerous Aggrieved Employees are no longer employed by
27 Defendants; they either quit Defendants’ employ or were fired therefrom. Plaintiff seeks civil
28 penalties against Defendants for their failure to timely pay Plaintiff and the Aggrieved Employee

1 all wages owed during the applicable statutory period. Defendants failed to pay these Employees
2 all wages due and certain at the time of termination or within seventy-two (72) hours of
3 resignation. The wages withheld from these Employees by Defendants remained due and owing
4 for more than thirty (30) days from the date of separation from employment.

5 168. Under Labor Code § 201, “(a) If an employer discharges an employee, the wages
6 earned and unpaid at the time of discharge are due and payable immediately....” Under Labor
7 Code § 202, “(a) If an employee not having a written contract for a definite period quits his or her
8 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
9 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
10 case the employee is entitled to his or her wages at the time of quitting.”

11 169. Labor Code § 203 further provides: “(a) If an employer willfully fails to pay,
12 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
13 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
14 continue as a penalty from the due date thereof at the same rate until paid or until an action
15 therefor is commenced; but the wages shall not continue for more than 30 days....”

16 170. Under Labor Code § 2926, “[a]n employee who is not employed for a specified
17 term and who is dismissed by his employer is entitled to compensation for services rendered up to
18 the time of such dismissal.” Also, under Labor Code § 2927, “[a]n employee who is not employed
19 for a specified term and who quits the service of his employer is entitled to compensation for
20 services rendered up to the time of such quitting.”

21 171. Labor Code § 204(a) also instructs that: “All wages, ...earned by any person in
22 any employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
24 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
25 during which the labor was performed, and labor performed between the 16th and the last day,
26 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
27 month.” Under Labor Code § 204(d), “[t]he requirements of this section shall be deemed satisfied
28 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not

1 more than seven calendar days following the close of the payroll period.” As detailed above,
2 Defendants maintained a consistently applied policy and practice of not paying all wages earned
3 between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all
4 wages earned between the 16th and the last day of the month between the 1st and 10th day of the
5 following month. Defendants similarly failed to pay all wages earned by not more than seven
6 calendar days following the close of the payroll period.

7 172. Defendants failed to pay Plaintiff and the Aggrieved Employees without abatement,
8 all wages as defined by applicable California law. Among other things, these Employees were not
9 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
10 or requiring off the clock work and by failing to correctly calculate the regular rate by not
11 incorporating shift differentials, incentive pay, non-discretionary bonuses and/or commissions
12 used to calculate and overtime compensation for Plaintiff and Aggrieved Employees, and
13 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
14 further detailed in this Complaint. Defendants’ failure to pay said wages within the required time
15 was willful within the meaning of Labor Code § 203.

16 173. All wages due and owing to Plaintiff and the Aggrieved Employees, including as
17 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
18 wages required by Labor Code § 1194 and other sections became due and payable to each
19 employee in each pay period that he or she was not provided with a meal period or rest period or
20 paid straight or overtime wages to which he or she was entitled.

21 174. Under Labor Code § 210, “(a) In addition to, and entirely independent and apart
22 from, any other penalty provided in this article, every person who fails to pay the wages of each
23 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
24 subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
25 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
26 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
27 amount unlawfully withheld.”

28 ///

1 175. Similarly, Section 20 of IWC Wage Order No. 4 addresses further penalties as
2 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
3 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
4 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
5 underpaid employee for each pay period during which the employee was underpaid in addition to
6 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
7 each underpaid employee for each pay period during which the employee was underpaid in
8 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
9 receive payment of all wages recovered.”

10 176. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
11 policies, practices and business acts of Defendants to the extent provided by law as a
12 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of wages
13 as permitted by Labor Code § 558, as a separate civil penalty provided by the PAGA statute.

14 177. Defendants violated the above statutes by failing to promptly pay Plaintiff and
15 other aggrieved non-exempt employees all earned wages due each and every pay period, as well as
16 immediately upon termination and/or within 72 hours upon resignation.

17 178. During the applicable statutory period, Defendants violated, and continue to
18 violate, California Labor Code § 204 and Section 20 of IWC Wage Order No. 1 by failing to
19 compensate Plaintiff and other aggrieved hourly employee overtime premium wages for overtime
20 hours worked, premium pay for denied off-duty meal and rest periods (wages), and other wages
21 due to Plaintiff and other Aggrieved Employees each pay period, as alleged in more detail herein.

22 179. Further, Defendants violated, and continue to violate, California Labor Code §§
23 201-204, 2926, and 2927 by failing to compensate employees, including Plaintiff and other
24 Aggrieved Employees no longer working for Defendants, for services rendered up to the time of
25 dismissal or quitting.

26 180. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs

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

4 181. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
5 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
6 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
7 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
8 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 201,... 202,
9 203, ...204,... 558,...1198,...” among the provisions of the Code that allow for recovery of civil
10 or statutory penalties pursuant to the PAGA.

11 182. Defendants are liable for PAGA penalties resulting from their failure to timely pay
12 all wages owed to Plaintiff and other Aggrieved Employees at the time of their termination of
13 separation from employment, and failure to timely pay all wages owed twice monthly.
14 Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative Action,
15 all civil and statutory penalties authorized for violations under Labor Code §§ 201, 201, 203, 204,
16 1197.5, 1198, 2926, and 2927, and Plaintiff seeks all civil penalties available and applicable, and
17 wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the
18 applicable IWC Wage Order(s), and also for attorneys’ fees and costs pursuant to Labor Code §
19 2699(g)(1).

20 183. Aggrieved Employees may recover penalties for Defendants’ failure to timely pay
21 all wages owed, as the civil penalty under California Labor Code 558 applies to any provision
22 regulating hours and days of work in any Order, and Plaintiff has fully complied with procedures
23 specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil
24 penalties will therefore also include the recovery of underpaid wages pursuant to Labor Code §§
25 558(a)(1)-(3), in an amount according to proof and subject to Court approval.

26 **RELIEF REQUESTED**

27 WHEREFORE, Plaintiff prays for the following relief:

- 28 1. On the First Cause of Action: For recovery of all civil penalties for unpaid

1 minimum and regular wages for all hours worked during the applicable statutory period as
2 permitted by California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K),
3 4, and 20 of the applicable IWC Wage Order(s), including civil and statutory penalties available
4 and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
5 2699.5, to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery
6 to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to
7 proof and subject to approval by the Court;

8 2. On the Second Cause of Action: For recovery of all civil penalties for unpaid
9 overtime and premium wages for all hours worked during the applicable statutory period as
10 permitted by Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20
11 of the applicable IWC Wage Order(s), including all civil and statutory penalties available and
12 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
13 2699.5, with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees
14 in an amount according to proof and subject to approval by the Court;

15 3. On the Third Cause of Action: For recovery of all civil penalties for non-compliant
16 meal periods during the applicable statutory period and failure to pay one-hour of premium wages
17 to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and
18 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil and statutory
19 penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections
20 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code §
21 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
22 Employees in an amount according to proof and subject to approval by the Court;

23 4. On the Fourth Cause of Action: For recovery of all civil penalties for non-
24 compliant rest periods during the applicable statutory period and failure to pay one-hour of
25 premium wages to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7,
26 512, 558, and 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil
27 and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including
28 sections 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor

1 Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
2 Employees in an amount according to proof and subject to approval by the Court.;

3 5. On the Fifth Cause of Action: For recovery of all civil penalties for failure to Pay
4 Vacation Days including all civil and statutory penalties available and applicable, and wages,
5 under Labor Code with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
6 Employees in an amount according to proof and subject to approval by the Court;

7 6. On the Sixth Cause of Action: For recovery of all civil penalties for failure to
8 Comply with Labor Code § 245 *et seq.* and 246 including all civil and statutory penalties available
9 and applicable, and wages, under Labor Code with 75% of recovery to the LWDA and 25% of the
10 recovery to the Aggrieved Employees in an amount according to proof and subject to approval by
11 the Court; Aggrieved Employees in an amount according to proof and subject to approval by the
12 Court;

13 7. On the Seventh Cause of Action: For recovery of all civil penalties for Defendants'
14 failure to reimburse all necessary business expenses incurred by Plaintiff and the Aggrieved
15 Employees as permitted by Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable
16 IWC Wage Orders, including all civil and statutory penalties available and applicable under Labor
17 Code §§ 2802 and 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i),
18 with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
19 amount according to proof and subject to approval by the Court.

20 8. On the Eighth Cause of Action: For recovery of all civil penalties for inaccurate
21 wage statements Defendants provided to Plaintiff and the Aggrieved Employees and failure to
22 maintain employment records as permitted by Labor Code §§ 226, 1174, 1198, and 1198.5, and
23 Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), including all civil and
24 statutory penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and
25 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of
26 recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount
27 according to proof and subject to approval by the Court;

28 9. On the Ninth Cause of Action: For recovery of all civil penalties pursuant to Labor

1 Code § 2699(f)(2) where a statutory civil penalty is not provided, for failing to timely pay all
2 wages owed and to timely pay them to Aggrieved Employees upon termination or separation from
3 employment as permitted under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and 2927,
4 including all civil and statutory penalties, and wages, available and applicable under Labor Code
5 §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage
6 Order(s), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery
7 to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to
8 proof and subject to approval by the Court;

9 10. For reasonable attorneys' fees and costs of suit to the extent permitted under the
10 PAGA and applicable Labor Code sections, including Labor Code § 2699(g)(1), in an amount
11 according to proof and subject to Court approval.

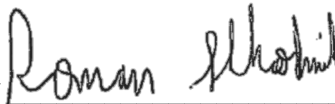
12 11. For pre-judgment and post-judgment interest at the legal rate of 10% in the State of
13 California on readily calculable monies due to the extent provided by California law and
14 authorized under the PAGA, in an amount according to proof;

15 12. For the Court to otherwise determine the appropriate remedy to compensate
16 Plaintiff and each Aggrieved Employee as required to promote fairness and justice; and

17 13. For such other and further relief as this Court may deem necessary, proper and/or
18 just.

19
20 DATED: December 13, 2023

D.LAW, INC.

21 By 

22 Emil Davtyan
23 Roman Shkodnik
24 Amanda Fazio

25 Attorneys for Plaintiff RAMONDA SHAKIR
26 and all similarly aggrieved employees
27
28

EXHIBIT A

**DAVID YEREMIAN
& ASSOCIATES INC**

880 E Broadway
Glendale CA 91205

818 962 6465
818 962 6469 FAX

DAVID@YEREMIANLAW.COM

September 14, 2023

VIA ON-LINE SUBMISSION ONLY TO:
<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

C T Corporation System, agent for service
Waterton Residential LLC dba Waterton Residential
330 N. Brand Blvd. Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 3035 9139 25

Waterton Hospitality Management LLC
1243 S. Olive Street
Los Angeles, CA 90015
Certified Mail Tracking Number: 9414 8112 0620 3035 9155 78

Re: Labor Code § 2699 Penalties
Shakir v. Waterton Residential LLC dba Waterton Residential et al.

Gentlepersons:

This office represents Plaintiff Ramonda Shakir (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Waterton Residential LLC dba Waterton Residential, Waterton Hospitality Management LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act. The allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all their Aggrieved Employees in California. This Notice Letter addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Specifically, Aggrieved Employees were not paid for the time that they worked “post-shift” without compensation by completing various trainings. The uncompensated time also included the time Aggrieved Employees worked off-the-clock during meal periods. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants’ timekeeping system for the beginning and ending times of their work shifts including requiring Aggrieved Employees to clock in and clock out when they were starting and ending work for the day. The timekeeping system thus permitted Defendants to record clock in and clock out times to the real-time minute. However, rather than paying the Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the quarter hour (*i.e.*, to the nearest 15 minute time increment), and generally did so to the detriment of the Employees, and these unlawfully rounded time entries were inputted into Defendants’ payroll system from which wage statements and payroll checks were created. Plaintiff also believes that management altered timesheets to avoid paying them for all hours worked.

Defendants failed to pay Aggrieved Employees proper overtime wages. As discussed above Aggrieved Employees were not paid for the time that they worked off-the-clock without compensation during meal periods to engage in work-related tasks, such as conduct tours of apartment units. Furthermore, the uncompensated time included the time Aggrieved Employees were required to complete work related assignments, such as completing training outside of their scheduled shifts. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all

remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Additionally, Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay was calculated and paid.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Defendants required all Aggrieved Employees to keep their cell phones on throughout their meal breaks and answer calls should their assistance be required even if during their meal breaks. Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees who often worked at least eight (8) hours in a day were entitled to at least two breaks but were required to work through their periods which they were continuously denied. Defendants required all Aggrieved Employees to keep their cell phones on throughout their rest breaks and answer calls should their assistance be required even if during their rest breaks. Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage and vehicle maintenance, mileage, and fuel which was necessary to perform their duties under Defendants' employ which was used throughout the course of Aggrieved Employees' duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on

proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above.

Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime

compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked "post-shift" without compensation by completing various trainings. The uncompensated time included the time Aggrieved Employees worked off-the-clock during meal periods. Accordingly, Aggrieved Employees were required to work without pay. Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees because Defendant would round down Aggrieved Employees time to the nearest 15-minute time increment order to avoid paying them for all the hours worked. Plaintiff also believes that management altered timesheets to avoid paying them for all hours worked. Thus, Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful,

intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above including the time they worked and "post-shift" without compensation by completing various trainings and time spent working while clocked out for meal breaks caused Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, as discussed above Defendants improperly rounded down to the nearest quarter hour, changed, adjusted and/or modified Plaintiff and Aggrieved Employees hours in order to avoid paying them for all hours worked. Plaintiff also believes that management altered timesheets to avoid paying them for all hours worked. Moreover, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for

correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Comply with Labor Code §§ 245 et seq. and 246

California Labor Code § 245 et seq. requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1). Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 et seq. and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 245 et seq. and 246. Plaintiff accordingly seeks this relief available for

Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and 512 Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks. Defendants required all Aggrieved Employees to keep their cell phones on throughout their meal breaks and answer calls should their assistance be required even if during their meal breaks

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements. Defendants required all

Aggrieved Employees to keep their cell phones on throughout their rest breaks and answer calls should their assistance be required even if during their rest breaks. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage and vehicle maintenance, mileage, and fuel which was necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages

are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculate these premiums by not including all form of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding, time alteration by management, and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by

itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period, Plaintiff will file a Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558,

558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and

2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(h) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

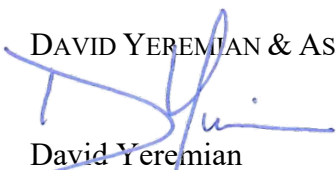
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Waterton Residential LLC dba Waterton Residential, Waterton Hospitality Management LLC, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in a Complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Above listed Waterton Residential LLC dba Waterton Residential and Waterton Hospitality Management LLC

**DAVID YEREMIAN
& ASSOCIATES INC**

880 E Broadway
Glendale CA 91205

818 962 6465
818 962 6469 FAX

DAVID@YEREMIANLAW.COM

September 28, 2023

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

C T Corporation System, Agent for Service
Waterton Residential LLC dba Waterton Residential
330 N. Brand Blvd. Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 3600 6459 78

Waterton Residential LLC dba Waterton Residential
222 S. Riverside Plaza, 20th Floor
Chicago, IL 60606
Certified Mail Tracking Number: 9414 8112 0620 3600 6701 16

Waterton Hospitality Management LLC
1243 S. Olive Street
Los Angeles, CA 90015
Certified Mail Tracking Number: 9414 8112 0620 3600 6682 81

Re: Labor Code § 2699 Penalties
Shakir v. Waterton Residential LLC dba Waterton Residential et al.

LWDA Case No. LWDA-CM-981675-23

Gentlepersons:

This office represents Plaintiff Ramonda Shakir (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Waterton Residential LLC dba Waterton Residential, Waterton Hospitality Management LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act. The allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all their Aggrieved Employees in California. This Notice Letter addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Specifically, Aggrieved Employees were not paid for the time that they worked “post-shift” without compensation by completing various trainings. The uncompensated time also included the time Aggrieved Employees worked off-the-clock during meal periods. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants’ timekeeping system for the beginning and ending times of their work shifts including requiring Aggrieved Employees to clock in and clock out when they were starting and ending work for the day. The timekeeping system thus permitted Defendants to record clock in and clock out times to the real-time minute. However, rather than paying the Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the quarter hour (*i.e.*, to the nearest 15-minute time increment), and generally did so to the detriment of the Employees, and these unlawfully rounded time entries were inputted into Defendants’ payroll system from which wage statements and payroll checks were created. Plaintiff also believes that management altered timesheets to avoid paying them for all hours worked.

Defendants failed to pay Aggrieved Employees proper overtime wages. As discussed above Aggrieved Employees were not paid for the time that they worked off-the-clock without compensation during meal periods to engage in work-related tasks, such as conduct tours of apartment units. Furthermore, the uncompensated time included the time Aggrieved Employees were required to complete work related assignments, such as completing training outside of their scheduled shifts. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed

above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Additionally, Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay was calculated and paid.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Defendants required all Aggrieved Employees to keep their cell phones on throughout their meal breaks and answer calls should their assistance be required even if during their meal breaks. Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees who often worked at least eight (8) hours in a day were entitled to at least two breaks but were required to work through their periods which they were continuously denied. Defendants required all Aggrieved Employees to keep their cell phones on throughout their rest breaks and answer calls should their assistance be required even if during their rest breaks. Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage and vehicle maintenance, mileage, and fuel which was necessary to perform their duties under Defendants'

employ which was used throughout the course of Aggrieved Employees' duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above.

Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other

applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked “post-shift” without compensation by completing various trainings. The uncompensated time included the time Aggrieved Employees worked off-the-clock during meal periods. Accordingly, Aggrieved Employees were required to work without pay. Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees because Defendant would round down Aggrieved Employees time to the nearest 15-minute time increment order to avoid paying them for all the hours worked. Plaintiff also believes that management altered timesheets to avoid paying them for all hours worked. Thus, Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor

Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above including the time they worked and "post-shift" without compensation by completing various trainings and time spent working while clocked out for meal breaks caused Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, as discussed above Defendants improperly rounded down to the nearest quarter hour, changed, adjusted and/or modified Plaintiff and Aggrieved Employees hours in order to avoid paying them for all hours worked. Plaintiff also believes that management altered timesheets to avoid paying them for all hours worked. Moreover, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally

requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Comply with Labor Code §§ 245 et seq. and 246

California Labor Code § 245 et seq. requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid

nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and 512 Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks. Defendants required all Aggrieved Employees to keep their cell phones on throughout their meal breaks and answer calls should their assistance be required even if during their meal breaks

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558,

including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements. Defendants required all Aggrieved Employees to keep their cell phones on throughout their rest breaks and answer calls should their assistance be required even if during their rest breaks. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage and vehicle maintenance, mileage, and fuel which was necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through

this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per

employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculate these premiums by not including all form of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants’ systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants’ uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding, time alteration by management, and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, *et seq.*

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

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Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period, Plaintiff will file a Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(h) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

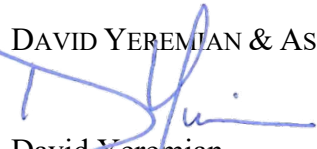
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Waterton Residential LLC dba Waterton Residential, Waterton Hospitality Management LLC, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in a Complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Above listed Waterton Residential LLC dba Waterton Residential and Waterton Hospitality Management LLC