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Kavathas and the Aggrieved Employees
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

11 ANGIE PHAN and CASSANDRA
KAVATHAS, in their representative capacity,
on behalf of the State of California, the general
12 public and all aggrieved employees of
Defendants,
13

14 Plaintiffs,

15 v.

16 TFC PARTNERS, INC., d/b/a NFC AMENITY
MANAGEMENT, a California corporation, and
17 DOES 1 THROUGH 50, inclusive,
18

19 Defendants.
20
21
22
23

Case No.: 23CV056741

Civil Unlimited Amount Demanded Exceeds
\$35,000.00

**FIRST AMENDED COMPLAINT:
REPRESENTATIVE ACTION FOR NON-
INDIVIDUAL CIVIL PENALTIES
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (Labor Code §§ 2698
et seq.)**

1. Labor Code Private Attorneys General Act
Representative Claims

24 Plaintiffs Angie Phan (“Plaintiff Phan”) and Cassandra Kavathas (“Plaintiff Kavathas”)
25 (collectively referred to as “Plaintiffs”) bring this representative enforcement action in their representative
26 capacity only against Defendant TFC Partners, Inc. d/b/d NFC Amenity Management (“NFC”) and DOES
27 1 through 50, inclusive (collectively, “Defendants”), on the following grounds:
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INTRODUCTION

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2 1. Plaintiffs are not alleging any individual claims or bringing any PAGA claims in their
3 individual capacity.

4 2. Plaintiffs bring this representative/non-individual enforcement action under the Private
5 Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf
6 of themselves and all other current and former non-exempt employees who performed work for
7 Defendants in California during the time period commencing on the date that is one (1) year and sixty-
8 five (65) days prior to the filing of this Complaint through and including the date that trial concludes
9 (referred to herein as “Aggrieved Employees”).

10 3. Plaintiffs allege that during the relevant time period, NFC engaged in a common practice
11 and pattern of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial
12 Welfare Commission (“IWC”) Wage Orders by, among other things:

- 13 a. Failing to provide meal periods and/or pay premium wages;
- 14 b. Failing to authorize and permit rest periods and/or pay premium wages;
- 15 c. Failing to timely pay all minimum, regular, and/or overtime wages;
- 16 d. Failing to reimburse business expenses;
- 17 e. Failing to maintain accurate employment records;
- 18 f. Failing to furnish accurate itemized wage statements;
- 19 g. Failing to timely pay all wages due and owing upon separation of employment
20 and/or the required waiting time penalties; and
- 21 h. Failing to produce Plaintiff Kavathas’s employment records for inspection.

22 4. By and through this representative action, Plaintiffs seek to recover all available remedies,
23 including, but not limited to, civil penalties, reasonable attorneys’ fees, and litigation costs on behalf of
24 themselves and all other Aggrieved Employees, the general public, and the state of California.

25 5. All allegations in this Complaint are based upon information and belief except those
26 allegations specifically pertaining to Plaintiffs and/or their counsel, which are based upon personal
27 knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have evidentiary
28 support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to Code to Labor Code §§ 2698 *et seq.*, Plaintiffs bring this action, in their representative capacity, on behalf of themselves and all other Aggrieved Employees, as defined herein.

7. This Court has personal jurisdiction over NFC because NFC conducts business in the state of California and has caused injuries in the county of Alameda, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and relevant IWC Wage Order, as alleged herein.

8. Venue as to NFC is proper in this judicial district pursuant to Code of Civil Procedure § 395(a) and 395.5 because each defendant, including each fictitiously named defendant, transacts business in the county of Alameda and is otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs and all other Aggrieved Employees within the county of Alameda and throughout the state of California.

THE PARTIES

I. PLAINTIFFS

9. Plaintiff Angie Phan at all material times mentioned herein:
- a. Was and is a resident of Alameda County in the state of California;
 - b. Was employed by NFC from approximately December 17, 2022, to June 25, 2023;
 - c. Performed work for NFC as a concierge throughout Santa Clara County, California;
 - d. Was classified by NFC as a non-exempt employee for purposes of the Labor Code and applicable IWC Wage Order;
 - e. Earned an hourly wage;
 - f. Was to be paid on a biweekly basis;
 - g. Was typically scheduled to work sixteen (16) hours per week;
 - h. Was typically scheduled to begin work on Saturdays and Sundays from 7:00 a.m. to 3:00 p.m.;
 - i. Was not provided with the opportunity to take legally compliant meal periods

and/or timely paid meal period premium wages;

- j. Was not authorized and permitted to take legally compliant rest periods and/or timely paid rest period premium wages;
- k. Was not compensated all minimum, regular, and/or overtime wages for all time worked or spent under the control of NFC;
- l. Was not reimbursed for all necessary business expenses she incurred in the discharge of her job duties, including costs incurred for using her personal cell phone to complete work tasks;
- m. Contends her employment records, including time and payroll records, were not accurately maintained by NFC;
- n. Was not furnished with accurate itemized wage statements;
- o. Was not timely paid all wages due and owing upon separation of employment;
- p. Was not paid the required waiting time penalties for late payment of final wages;
- q. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- r. Has complied with all requirements outlined in the Labor Code §§ 26988, *et seq.*

10. Plaintiff Cassandra Kavathas at all material times mentioned herein:

- a. Was employed by NFC from approximately June of 2023 to August 9, 2023;
- b. Performed work for NFC as a manager and concierge throughout Santa Clara County, California;
- c. Was classified by NFC as a non-exempt employee for purposes of the Labor Code and applicable IWC Wage Order;
- d. Earned an hourly wage;
- e. Was to be paid on a biweekly basis;
- f. Was typically scheduled to work twenty-one (21) to twenty-eight (28) hours per week;
- g. Was typically scheduled to work three (3) to five (4) times a week from 7:00 a.m. to 3:00 p.m.;

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- h. Was required to work off-the-clock to arrange employees' schedules in her capacity as a manager;
- i. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid meal period premium wages;
- j. Was not authorized and permitted to take legally compliant rest periods and/or timely paid rest period premium wages;
- k. Was not compensated all minimum, regular, and/or overtime wages for all time worked or spent under the control of NFC;
- l. Was not reimbursed for all necessary business expenses she incurred in the discharge of her job duties, including costs incurred for using her personal cell phone to complete work tasks;
- m. Contends her employment records, including time and payroll records, were not accurately maintained by NFC;
- n. Was not furnished with accurate itemized wage statements;
- o. Was not timely paid all wages due and owing upon separation of employment;
- p. Was not paid the required waiting time penalties for late payment of final wages;
- q. Was not timely provided with her employment records;
- r. Is an "aggrieved employee" within the meaning of Labor Code § 2699(c); and
- s. Has complied with all requirements outlined in the Labor Code §§ 26988, *et seq.*

II. DEFENDANTS

11. Defendant NFC Amenity Management ("NFC") is incorporated in Delaware, headquartered in Asbury Park, New Jersey, and conducts substantial business throughout California. NFC specializes in concierge and front desk services that cater to high-end, multi-family housing and fitness and spa centers. NFC employs a roster of employees throughout the United States including California. NFC staffs at least sixteen multi-family apartments throughout Santa Clara, San Francisco, Oakland, Temecula, and San Diego.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiffs, who therefore

1 sue these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiffs will
2 amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants
3 when their true names are ascertained. Plaintiffs are informed and believe, and on that basis allege, that
4 each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

5 13. At all times mentioned herein, the acts alleged to have been done and/or caused by the
6 named defendant are also alleged to have been done and/or caused by the fictitiously named defendants,
7 and by each of their agents and/or employees who acted within the scope of their agency and/or
8 employment.

9 14. At all times mentioned herein, each named defendant, including each fictitiously named
10 defendant, is believed to have acted individually or as an officer, agent, or employee of the other
11 defendants, including each fictitiously named defendant.

12 15. At all times mentioned herein, each named defendant, including each fictitiously named
13 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the other
14 defendants, and in doing the things alleged herein, acted within the course and scope of such agency,
15 employment, alter-ego and/or in furtherance of the joint venture.

16 16. At all times mentioned herein, the acts and/or omissions of each of the named defendants,
17 including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions
18 of each and every one of the other defendants, including each fictitiously named defendant, in proximately
19 causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants,
20 including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and
21 every one of the acts and/or omissions complained herein. Each named defendant, including each
22 fictitiously named defendant, was and is acting with authority of each and every other defendant and/or
23 are acting as agents of each and every other defendant or Doe defendant.

24 17. At all times mentioned herein there was a unity of interest and ownership between each
25 named defendant, including each fictitiously named defendant, such that all defendants, including each
26 fictitiously named defendant, acted as a single employer of Plaintiffs and all other Aggrieved Employees.

27 18. At all times mentioned herein, each named defendant, including each fictitiously named
28 defendant, exercised supervision and control over the wages, hours, and/or working conditions of

1 Plaintiffs and all other Aggrieved Employees, including, but not limited to, implementing standard
2 policies and procedures.

3 19. At all times mentioned herein, each named defendant, including each fictitiously named
4 defendant, caused Aggrieved Employees, including Plaintiffs, to work and/or prevented Plaintiffs and
5 other Aggrieved Employees from working.

6 20. At all times mentioned herein, each named defendant, including each fictitiously named
7 defendant, had control over Plaintiffs and Aggrieved Employees.

8 21. Each named defendant, including each fictitiously named defendant, is alleged to have
9 caused each of the violations alleged herein.

10 22. Each named defendant, including each fictitiously named defendant, is jointly and
11 severally liable for each of the violations alleged herein.

12 **FACTUAL ALLEGATIONS**

13 23. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 24. Plaintiff Phan was employed by, or otherwise performed work for NFC from
16 approximately December 17, 2022 to June 25, 2023. During her employment, Plaintiff Phan performed
17 work as a concierge. Plaintiff Phan's job duties included, but were not limited to, greeting residents at the
18 concierge desk, unlocking doors for guests and delivery personnel, answering residents' questions,
19 supervising and assisting with the delivery of packages, and performing the highest level of customer
20 services to "wow" all clients by exceeding expectations. At all relevant times, Plaintiff Phan was classified
21 as a non-exempt employee, earned an hourly rate of \$24.00 per hour, and was paid on a biweekly basis.
22 Plaintiff Phan typically worked sixteen (16) hours per week. Her shifts were scheduled to begin from
23 7:00 a.m. to 3:00 p.m. Plaintiff Phan also occasionally worked overtime hours.

24 25. Plaintiff Kavathas was employed by, or otherwise performed work for, NFC from
25 approximately June of 2023 to August 9, 2023. In the beginning of her employment, Plaintiff Kavathas
26 worked as a manager which required her to work at all hours of the day to maintain employee schedules.
27 On or around July of 2023, she was demoted to a concierge where she maintained identical duties as
28 Plaintiff Phan.

26. At all relevant times, Plaintiff Kavathas was classified as a non-exempt employee, earned an hourly rate of \$25.00 per hour as a manager and an hourly rate of \$21.00 per hour as a concierge. Plaintiff Kavathas was paid on a biweekly basis. Plaintiff Kavathas typically worked sixteen (16) hours per week. Her shifts were scheduled to begin from 7:00 a.m. to 3:00 p.m. Plaintiff Kavathas also occasionally worked overtime hours.

27. NFC has employed, and will continue to employ, several individuals in a non-exempt capacity in Santa Clara County and throughout the state of California.

28. Throughout the relevant time period, all Aggrieved Employees earned an hourly wage, were to be paid on a biweekly basis, and worked at least eight (8) hours per day.

29. Plaintiffs and all other Aggrieved Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein.

30. Plaintiffs further allege that they and all other Aggrieved Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

31. During the relevant time period, NFC did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing all Aggrieved Employees with the opportunity to take an uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work and/or tenth (10th) hour of work when they worked five (5) and/or ten (10) or more hours in a day.

32. Plaintiffs and other Aggrieved Employees typically worked over six (6) hours in a workday. However, Plaintiffs and other Aggrieved Employees were not provided with the opportunity to take lawful meal periods because NFC regularly directed, pressured, compelled and/or otherwise coerced Plaintiffs and other Aggrieved Employees to work during their meal periods; mandated Aggrieved Employees to prioritize resident needs over taking legally compliant meal periods; and maintained unrealistic work expectations for their understaffed facilities.

33. For instance, NFC diligently maintained the highest level of customer services to “wow” all clients by exceeding expectations. NFC further attempted to reduce costs by understaffing their concierges. To ensure that Aggrieved Employees were readily available for any clientele needs while reducing costs, NFC required Aggrieved Employees to place a sign with the company number on the

1 unmanned desk and required Aggrieved Employees to monitor the phone throughout their breaks. When
2 Plaintiff Phan explained to her manager that NFC's understaffing and company policies were unrealistic
3 and resulted in interrupted, short, and missed breaks, her manager instructed her to take breaks without
4 offering any actual resolution for the conflicting policies.

5 34. Moreover, NFC's impractical work standards did not permit Plaintiffs and other Aggrieved
6 Employees to take uninterrupted meal breaks. An integral part of Plaintiffs' job was to unlock the secured
7 apartment doors for food and package deliveries. Since Plaintiffs typically started their shifts at 7:00 a.m.,
8 their lunches typically lined up with the 11:00 a.m. to 1:00 p.m. lunch rush. As a result, Plaintiffs' lunch
9 breaks were constantly interrupted to let in food delivery personnel like Uber Eats and Door Dash.

10 35. During the relevant time period, Plaintiffs and other Aggrieved Employees' time records
11 were regularly and unlawfully altered by supervisors to reflect a legally compliant meal period, even
12 though Plaintiffs and other Aggrieved Employees were required to work through their meal periods and/or
13 were not provided with a timely, duty-free, and/or uninterrupted meal period of at least thirty (30) minutes.

14 36. NFC knew or should have known that Plaintiffs and other Aggrieved Employees were not
15 provided with the opportunity to take legally compliant meal periods because NFC specifically instructed
16 Plaintiffs and other Aggrieved Employees to place a sign with the company phone number, and required
17 Plaintiffs and other Aggrieved Employees to monitor this phone throughout their breaks.

18 37. NFC also failed to maintain a policy informing Plaintiffs and other Aggrieved Employees
19 of their right to take compliant meal periods. NFC further failed to inform Plaintiffs and other Aggrieved
20 Employees of their right to compensation for one (1) hour of wages at the legal regular rate of
21 compensation for each missed, late, interrupted and/or on-duty meal period.

22 38. NFC did not, and does not, have a policy, practice, procedure, guideline, and/or culture of
23 paying meal period premiums to Plaintiffs and other Aggrieved Employees for all meal periods that do
24 not comply with California law. In fact, NFC has a policy, practice and culture of not paying *any* meal
25 premium wages under any circumstances.

26 39. NFC did not, and does not, have a policy, practice, procedure, guideline, and/or culture of
27 authorizing and permitting Plaintiffs and other Aggrieved Employees to take uninterrupted, off-duty rest
28 periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.

40. Plaintiffs and other Aggrieved Employees were regularly directed, compelled, and/or otherwise coerced to work through their rest periods in order to comply with NFC's unrealistic work expectations. For instance, as previously asserted, Plaintiffs were required to monitor the company phone and allow residents, guests, and delivery personnel through the secured doors during their breaks. NFC did not inform Plaintiffs or other Aggrieved Employees of their right to take uninterrupted, off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.

41. Plaintiffs allege that NFC knew or should have known that Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods because NFC directed, pressured, and/or otherwise coerced Aggrieved Employees, including Plaintiffs, to work through their rest periods to further promote NFC's high-end concierge status.

42. Plaintiffs contend that although they and other Aggrieved Employees were not provided with legally compliant rest periods, they and all other Aggrieved Employees were not compensated rest period premium wages for all non-compliant rest periods as required by California law.

43. NFC also failed to maintain a policy informing Plaintiffs and other Aggrieved Employees of their right to take compliant rest periods. NFC further failed to inform Plaintiffs and other Aggrieved Employees of their right to compensation for one (1) hour of wages at the legal regular rate of compensation for each missed, late, interrupted and/or on-duty rest period.

44. Plaintiffs allege that NFC had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not paying Aggrieved Employees all minimum, regular and/or overtime wages for all time engaged in work on behalf of NFC.

45. Plaintiffs and other Aggrieved Employees were mandated by NFC to perform work duties during their meal periods, including assisting residents, arranging residents' dry-cleaning, and unlocking the secured apartment doors for delivery services like Uber Eats, Door Dash, and Amazon. Plaintiffs and other Aggrieved Employees were also required to leave their personal cell phones and/or the company-issued cell phone on at all times, including during their meal and rest periods, and to answer work-related calls and messages during their meal and rest periods.

46. NFC did not consider time spent by Plaintiffs and other Aggrieved Employees during on-duty meal periods and/or the time spent performing work while off-the-clock during their meal periods as

1 compensable. Rather, NFC automatically deducted (“auto-deduct”) thirty (30) minutes from Plaintiffs’
2 and other Aggrieved Employees’ daily wages for meal periods, regardless of whether Aggrieved
3 Employees were engaged in work during their meal periods, and regardless of whether they were able to
4 take timely meal periods, whether they took meal periods of less than thirty (30) minutes, whether they
5 were free to leave the premises, and whether they were free from interruption for the full thirty (30)
6 minutes.

7 47. NFC’s auto-deduct policy resulted in the unlawful withholding of wages and/or overtime
8 for time actually worked. Therefore, NFC failed to timely pay Plaintiffs and other Aggrieved Employees
9 all minimum, regular and/or overtime wages owed to them when Plaintiffs and other Aggrieved
10 Employees worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.

11 48. NFC had, and continues to have, a policy, practice, procedure, guideline, and/or culture of
12 failing to reimburse Aggrieved Employees, including Plaintiffs, for all necessary business expenses that
13 were incurred in the discharge of their job duties. For example, NFC required Plaintiffs and other
14 Aggrieved Employees to use their personal cell phones to perform their job duties, to communicate with
15 their managers, and to answer work-related calls and messages. In addition, NFC required Plaintiffs and
16 other Aggrieved Employees to use their personal cell phones to clock in and out for their shifts on the
17 “ADP” app. Specifically, throughout Plaintiffs’ employment, they were not provided with a company-
18 issued device, thereby forcing them to use their personal cell phones to access the “ADP” app.

19 49. Despite the requirement that Aggrieved Employees use their personal cell phones for work
20 purposes, Plaintiffs and other Aggrieved Employees did not receive any reimbursement for these expenses
21 from NFC in violation of California law.

22 50. Plaintiffs contend that NFC had, and continues to have, a policy, practice, procedure,
23 guideline, and/or culture of knowingly and intentionally failing to maintain accurate records for Aggrieved
24 Employees, including Plaintiffs. For instance, NFC implemented an unlawful practice of automatically
25 deducting thirty (30) minutes from Aggrieved Employees’ timecards for meal periods when, in fact,
26 Aggrieved Employees were unable to take such meal periods off-duty, and failed to record the total hours
27 of compensable time worked by Aggrieved Employees, such as time spent working during meal periods.
28 Consequently, NFC failed to record Aggrieved Employees’ actual time worked, the proper beginning and

end of each meal period, and actual wages earned and paid, among other things, in violation of California law.

51. Further, Plaintiffs assert that NFC maintained a policy, practice, procedure, guideline, and/or culture of unlawfully altering Aggrieved Employees' time records to reflect their scheduled shifts rather than their actual hours worked. For instance, NFC's timekeeping system, the ADP app, failed to register Aggrieved Employees' time punches. To remedy this, supervisors would enter Aggrieved Employees' scheduled times rather than the actual hours worked. Moreover, on April 22, 2023, Plaintiff Phan was scheduled to work until 3:00 p.m., however her manager was not able to relieve her until 3:30 p.m. Despite clocking out at out at 3:30 p.m., Plaintiff Phan's time records reflected her pre-scheduled time of 3:00 p.m. Consequently, Plaintiff Phan and upon information and belief, other NCF Employees were not provided with accurate time records.

52. NFC had, and continues to have, a policy, practice, procedure, guideline, and/or culture of furnishing wage statements to Aggrieved Employees that do not accurately reflect the items required by Labor Code § 226(a), including but not limited to, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, the actual gross wages earned, and the actual net wages earned. For example, the wage statements furnished by NFC did not properly reflect the total hours of compensable time worked by Aggrieved Employees, such as time spent working while clocked out during meal periods.

53. Plaintiffs further allege that NFC failed to accurately identify their legal name on Aggrieved Employees' wage statements. Specifically, NFC identified themselves as "NFC Amenity Management" on their wage statements when they are actually registered in California as "TFC Partners, Inc."

54. Due to the missing and/or incorrect information on the furnished wage statements, Plaintiffs and other Aggrieved Employees were unable to reasonably identify their employer, nor could they promptly and easily determine the total number of hours actually worked, the applicable hourly rates in effect during the pay period, and/or the corresponding number of hours worked at each hourly rate, among other things.

55. Plaintiffs allege that NFC had, and continues to have, a policy, practice, procedure,

1 guideline, and/or culture of willfully failing to pay former Aggrieved Employees, such as themselves, all
2 wages due and owing upon separation of employment and/or the required waiting time penalties for the
3 late payment of such wages. Plaintiffs assert that they and other former Aggrieved Employees were not
4 timely paid all minimum, regular, and/or overtime wages due and owing upon separation of employment
5 because they and other former Aggrieved Employees were not compensated for the time spent performing
6 work during meal periods. Plaintiffs also assert that they and other former Aggrieved Employees were not
7 timely paid premium wages for unlawful meal and rest periods.

8 56. Additionally, Plaintiff Phan was not timely provided with her final paycheck on her last
9 day of employment, June 25, 2023. Rather, after numerous inquiries, Plaintiff Phan finally received
10 renumeration on July 12, 2023, seventeen days after her last day of employment.

11 57. Plaintiffs further allege that NFC has a policy, practice, procedure, guideline, and/or culture
12 of failing to pay the appropriate waiting time penalties to former Aggrieved Employees as provided under
13 California law.

14 58. Furthermore, Plaintiffs assert that NFC failed to timely provide Plaintiff Kavathas's
15 employment records. Plaintiff Kavathas to this date has still not received her employment records despite
16 providing a formal written request on October 2, 2023.

17 59. On September 6, 2023, Plaintiff Phan submitted written notice to the California Labor and
18 Workforce Development Agency ("LWDA") and NFC as required by the Private Attorneys General Act
19 of 2004 ("PAGA") informing them of NFC's alleged violations of the Labor Code.

20 60. On November 10, 2023, Plaintiff Phan satisfied the procedural requirements of Labor Code
21 § 2699.3 and subsequently filed the original complaint on December 15, 2023.

22 61. On May 20, 2024, Plaintiff Kavathas submitted written notice to the California Labor and
23 Workforce Development Agency ("LWDA") and NFC as required by the Private Attorneys General Act
24 of 2004 ("PAGA") informing them of NFC's alleged violations of the Labor Code.

25 62. According to Labor Code § 2699.3 the LWDA has sixty-five (65) days from the date of
26 submission to notify the parties of whether it intends to investigate the alleged violations.

27 63. If the LWDA does not provide the parties with notice of its intent to investigate within the
28 time proscribed by the statute, Plaintiffs will amend their complaint to include a claim for civil penalties

under the PAGA.

64. Plaintiffs believe that additional violations may be discovered and therefore reserve their right to allege additional violations of law as investigation and discovery warrants. In the event Plaintiffs discover additional violations, Plaintiffs will seek to amend the operative complaint as necessary.

PAGA DESIGNATION

65. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all paragraphs of this Complaint.

66. By and through this representative action, Plaintiffs intend to represent the following aggrieved employees:

All current and former non-exempt employees who performed work for Defendants in California during the period commencing one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the "PAGA Period") and who have suffered at least one of the violations alleged herein.

67. Plaintiffs and all Aggrieved Employees are all "employees as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

68. A more precise definition of the aggrieved employees may be determined after further investigation and discovery. Plaintiffs reserve their right to redefine the group of aggrieved employees as permitted by California Law.

69. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to § 2699(i).

70. During all, or a portion of, the one-year and sixty-five day period before Plaintiffs filed notice of their claims with LWDA, NFC was Plaintiffs' and all other Aggrieved Employees' employer or person acting on behalf of Plaintiffs' employer either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid

1 to any employee a wage less than the minimum fixed by California state law, and as such, is subject to
2 civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code §
3 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

4 71. Plaintiffs are “aggrieved employees” under the PAGA, because they were employed by the
5 alleged violator, NFC, and had one or more of the alleged violations committed against them, and therefore
6 is properly suited to represent the interests of other NFC Employees. See *Huff v. Securitas Security*
7 *Services, USA, Inc.*, 23 Cal. App. 5th 745, 751, 761 (2018); *Carrington v. Starbucks Corp.*, 30 Cal. App.
8 5th 504, 519 (2018).

9 72. Plaintiffs allege that all other Aggrieved Employees are also “aggrieved employees” under
10 the PAGA because they were employed by NFC and have experienced one or more of the alleged
11 violations outlined herein.

12 73. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiffs have exhausted their administrative
13 remedies because they complied with the notice requirements outlined in Labor Code § 2699.3. On
14 September 6, 2023, Plaintiff Phan submitted her notice to the LWDA and NFC informing them of NFC’s
15 alleged Labor Code violations pursuant to PAGA. (See **Exh. 1.**) On May 20, 2024, Plaintiff Kavathas
16 submitted her notice to the LWDA and NFC informing them of NFC’s alleged Labor Code violations
17 pursuant to PAGA. (See **Exh. 2.**) The LWDA had 65 days to provide notice of whether it intended to
18 investigate the alleged violations. To date, the LWDA has not provided notice of whether it intends to
19 investigate the alleged violations. Plaintiffs thus have the right to pursue, and do pursue, their claims under
20 PAGA in a representative capacity pursuant to Labor Code § 2699.

21 74. As set forth herein, NFC has committed, and continues to commit, numerous violations for
22 which the Labor Code and applicable IWC Wage Order entitles Plaintiffs, in their representative capacity,
23 to recover, on behalf of themselves and all other Aggrieved Employees, as well as the general public, civil
24 penalties as well as attorneys’ fees and costs from NFC for the alleged violations, described herein.

25 75. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the
26 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code
27 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code
28 §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198,

1 and 2802. Plaintiffs and other Aggrieved Employees are entitled to, and therefore seek, the civil penalties
2 described in Labor Code § 2699(f) for the violations of law described herein.

3 76. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought
4 pursuant to the PAGA shall be entitled to an award of reasonably attorneys' fees and costs. As such, in
5 their representative capacity on behalf of themselves and all other Aggrieved Employees, Plaintiffs are
6 entitled to, and therefore seek attorneys' fees and costs.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(Alleged by Plaintiffs as the Proxy or Agent of the State of California's Labor Law Enforcement**

10 **Agencies Against Defendant and Does 1-50)**

11 **PRIVATE ATTORNEYS GENERAL ACT OF 2005**

12 [Labor Code §§ 2698 *et seq.*]

13 77. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 78. Plaintiffs, in their representative capacity on behalf of themselves and all other NFC
16 Employees, are entitled to and thus seek to recover civil penalties through a representative action based
17 on violations of the following Labor Code and/or IWC Wage Order provisions:

- 18 a. Failing to timely pay all minimum, regular, and/or overtime wages in violation of
19 Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198, and the
20 "Minimum Wages" and "Hours and Days of Work" section of the applicable IWC
21 Wage Order;
- 22 b. Failing to provide legally compliant meal periods and/or timely pay premium wages
23 in lieu thereof in violation of Labor Code §§ 204, 226.7, 512, and the "Meal
24 Periods" section of the applicable IWC Wage Order;
- 25 c. Failing to authorize and permit legally compliant rest periods or timely pay
26 premium wages in lieu thereof in violation of Labor Code §§ 204, 226.7, and the
27 "Rest Periods" section of the applicable IWC Wage Order;
- 28 d. Failing to indemnify all necessary expenditures in violation of Labor Code § 2802

and the “Uniforms and Equipment” section of the applicable IWC Wage Order;

e. Failing to pay all wages due and owing upon separation of employment and/or the required waiting time penalties in violation of Labor Code §§ 201, 202, and 203;

f. Failing to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of the applicable IWC Wage Order;

g. Failing to maintain accurate employment records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the applicable IWC Wage Order; and

h. Failing to produce employment records for inspection in violation of Labor Code §§ 226(c) and 1198.5.

79. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ ... 204, 204(b), ... shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiffs and all other Aggrieved Employees are entitled to and do seek such civil penalty.

80. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a). Plaintiffs and all other Aggrieved Employees are thus entitled to and seek the described civil penalty.

81. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Therefore, Plaintiffs and all other Aggrieved Employees are entitled to and do seek the described civil penalty.

82. Labor Code § 1197.1 imposes upon NFC, for each initial violation of wage and hour laws, a penalty of \$100.00 for each underpaid employee for each pay period for which the employee is

underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages and liquidated damages pursuant to Labor Code § 1194.2, which states: “[i]n any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Plaintiffs and all other Aggrieved Employees are entitled to and do seek such civil penalty.

83. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiffs and other Aggrieved Employees are entitled to, and therefore seek, the above-described civil penalty.

84. Labor Code §§ 226(c) and 1198.5 each impose a civil penalty of \$750 penalty for failure to produce Plaintiff Kavathas’s employment records within twenty-one (21) and thirty (30) days of her written request.

85. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiffs, in their representative capacity on behalf of themselves and all other Aggrieved Employees, are entitled to, and therefore seek, attorneys’ fees and costs.

86. Plaintiffs, in their representative capacity on behalf of themselves and all other Aggrieved Employees, are entitled to and seek recovery of reasonable attorneys’ fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

87. Plaintiffs, in their representative capacity on behalf of themselves and all other Aggrieved Employees, request further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

Plaintiffs, in their representative capacity, pray for judgment against Defendants in favor of the state of California, Plaintiffs, and all other Aggrieved Employees as follows:

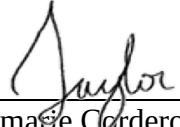
- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210, 226.3, 558,

558.1, 1174.1, 1174.5, 1197.1, 1198.5, 226(f), and 2698 et seq., and/or other applicable law;

- b. For an order determining that Plaintiffs are entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each Aggrieved Employee per pay period for each subsequent violation as provided in Labor Code §2699(f);
- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210, 218.5, 225.5, 226, 558, 558.1, 1194, 1197.1, 1198.5, 2698, 2699(g)(1), 2802(c), Code of Civil Procedure § 1021.5, and the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory and/or other applicable law; and
- d. For any and all other relief as this Court deems proper and just and it available under Labor Code §§ 2698 et seq.

Dated: August 12, 2024

GRAHAMHOLLIS APC

By:  

Vilmarie Cordero

Taylor M. Gee

Attorneys for Plaintiff Angie Phan, Cassandra Kavathas and the Aggrieved Employees

EXHIBIT 1

September 6, 2023

Attorneys at Law

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San Diego, California 92103
619.692.0800 voice
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Taylor M. Gee
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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

NFC Amenity Management
700 Bangs Avenue, Suite 3
Asbury Park, NJ 07712

TFC Partners, Inc.
c/o CSC – Lawyers Incorporating Service
Attn: Becky Degeorge
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: Angie Phan’s PAGA Claims Against NFC Amenity
Management and TFC Partners, Inc.**

Dear California Labor and Workforce Development Agency, NFC Amenity Management, and TFC Partners, Inc.:

Please be advised that Angie Phan (“Claimant”) has retained our firm, GrahamHollis APC, to represent her for various claims against her former employers, NFC Amenity Management and TFC Partners, Inc. (together referred to herein as the “Company” or “NFC”).

This letter shall serve as Claimant’s written notice to the California Labor and Workforce Development Agency (“LWDA”) and the Company of the alleged California Labor Code (“Labor Code”) violations Claimant claims that the Company committed against her and all other current and former non-exempt employees of the Company who worked in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code section 2698 et seq., “PAGA”), Labor Code section 2699.3.

Pursuant to Labor Code section 2699(a), and by way of this letter, Claimant intends to represent herself and all other individuals who currently or formerly performed work for the Company in California during the relevant time period (referred

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

Erik Dos Santos

Nora Steinhagen

Alyssa Smith*

Allison Schubert

Alex Kuner

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Brisa Martinez

Taylor M. Gee

*Provisionally Licensed Lawyer

to herein as “NFC Employees”). All NFC Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that she and all other NFC Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

NFC Amenity Management (“NFC”), also known as TFC Partners, Inc., is a Delaware corporation headquartered in New Jersey, which does business in California in the concierge and management industry. The Company provides concierge and front desk services that cater to high-end multi-family housing and fitness and spa centers. The Company employs a roster of employees from Florida to New York to California. Specifically, the Company staffs at least sixteen multi-family apartments throughout Santa Clara, San Francisco, Oakland, Temecula, and San Diego, California.

Claimant was employed or otherwise performed work for the Company as a concierge in the County of Santa Clara from approximately December 17, 2022, until her resignation on June 25, 2023. As a concierge, Claimant was responsible for managing the concierge desk, unlocking doors for guests and delivery personnel, answering residents’ questions, supervising, and assisting with packages, and performing the highest level of customer services to “wow” all clients by exceeding expectations. Throughout her employment, Claimant typically worked part-time on Saturdays and Sundays from 7:00 A.M. to 3:00 P.M. totaling sixteen (16) hours per week. During her employment, Claimant was paid biweekly at an hourly rate of \$24 per hour. At all relevant times, the Company classified Claimant as a non-exempt employee for the purposes of the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. The Company also employed, and continues to employ, other NFC Employees in various non-exempt positions during the relevant statutory period.

Claimant alleges that the Company denied, and continues to deny, Claimant and other NFC Employees the specific rights afforded to them under the Labor Code and the applicable IWC Wage Order. Specifically, the Company failed to provide Claimant and other NFC Employees with legally compliant meal and/or rest periods or pay them meal/or rest period premiums; failed to timely pay all minimum, regular, and/or overtime wages owed; failed to reimburse for necessary business expenses; failed to maintain accurate records; failed to issue accurate itemized wage statements, and failed to timely pay all wages due and owing upon separation of employment. Claimant also contends, based on information and belief, that all policies, practices, procedures and/or guidelines of the Company applicable to Claimant were also applicable to all other NFC Employees throughout the relevant time period.

Claimant alleges that the Company did not provide NFC Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that were free from the employer’s control when they worked more than five (5) hours in a day. Claimant asserts that the Company maintained a practice and/or policy that failed to afford Claimant and NFC Employees with the opportunity to take lawful meal periods because the Company required NFC Employees to be available at all times to assist clients. Specifically, the Company understaffed their employees to reduce costs by requiring NFC Employees to place a sign with the company phone number on the unmanned desk and have the NFC Employees monitor the Company phone throughout their breaks to assist clients with tasks

like package and food pick-ups, which resulted in late, interrupted, or missed meal breaks. In particular, NFC Employees worked in secured, private, multi-family apartment complexes and were required to unlock the doors and let in various carriers, like Amazon, Uber, and DoorDash drivers, to deliver packages and food to residents. Thus, the Company maintained an impractical work standard since NFC Employees lunches lined up at the typical 11:00 A.M-1:00 P.M. lunch rush, and were therefore constantly interrupted to let in Uber and DoorDash drivers.

Due to the Company culture, nature, and urgency of the tasks, Claimant and other NFC Employees were not able to report the non-complaint meal periods. Consequently, Claimant and, on information and belief, other NFC Employees were not provided with the opportunity to take legally compliant meal periods.

Claimant contends that the Company did not authorize or permit Claimant and other NFC Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or a major fraction thereof. Rather, Claimant and, on information and belief, other NFC Employees were directed, compelled and/or otherwise coerced to work through their rest periods because the Company required them to service their clients throughout their shifts. For example, Claimant was not permitted to take lawful rest periods during her shifts because she was expected to be on-duty to monitor the Company phone for client inquiries throughout the entirety of her shift and unlock the front door for various carriers.

Although Claimant and other NFC Employees did not receive legally compliant meal and/or rest periods, the Company did not timely pay Claimant, and on information and belief, other NFC Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other NFC Employees a meal and/or rest period premium for each workday that Claimant and other NFC Employees were not provided with a compliant meal and/or rest period.

Furthermore, Claimant asserts that she and, on information and belief, other NFC Employees were not timely paid all minimum, regular and/or overtime wages for all time actually worked. As described herein, Claimant and, on information and belief, other NFC Employees typically worked eight (8) hour shifts and consistently worked through their meal periods. However, the Company improperly considered the work Claimant and other NFC Employees performed during their meal periods as non-compensable time and failed to provide any remuneration. Claimant alleges that the Company automatically deducted thirty (30) minutes from her, and on information and belief, other NFC Employees' pay for meal periods, regardless of whether a compliant meal period was actually provided. As a result of being required to work off-the-clock during meal periods, the Company did not timely pay Claimant and, on information and belief, other NFC Employees regular and overtime wages when Claimant and other NFC Employees worked in excess of 8-hours in a workday and/or 40-hours in a workweek. Claimant further contends that on at least five separate occasions, the Company's timekeeping system inaccurately tracked her hours worked, which resulted in uncompensated work. Claimant informed her supervisor on multiple occasions of the inaccurate timekeeping. Though Claimant's supervisor occasionally fixed the time, on multiple occasions, her supervisor adjusted her time to create the appearance that Claimant worked less hours. Thus, given the frequency of the timekeeping glitches

and the Company's practice of inadequately adjusting NFC Employees' time worked, in culmination with the Company's failure to count all hours worked during breaks, Claimant and, on information and belief, other NFC Employees were not timely paid all regular and/or overtime wages.

Claimant also alleges that the Company did not reimburse Claimant and other NFC Employees for all necessary business expenses incurred in the discharge of their job duties. For instance, Claimant and, on information and belief, other NFC Employees were required to use their personal cell phones to clock in and out for their shifts and coordinate their schedules with their supervisor. To date, the Company has failed to provide reimbursement for the incurred business expenses. Thus, Claimant and, on information and belief, other NFC Employees did not receive any reimbursement for necessary business expenditures as required by California law.

As a direct result of the Company's illegal policies, practices, procedures, and/or guidelines, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other NFC Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law. For instance, the Company's practice of automatically deducting 30-minutes from Claimant's and, on information and belief, other NFC Employees' timecards for meal periods resulted in inaccurate employment records for Claimant and other NFC Employees. Claimant further alleges that the Company's timekeeping system constantly reflected inaccurate time punches.

Moreover, Claimant contends that her time records were unlawfully altered by her supervisor to reflect her scheduled time rather than her actual time worked. For example, the Company's timekeeping system, the ADP app, often failed to register NFC Employees' punches. As a result, Claimant's supervisor manually entered NFC Employees' scheduled shifts rather than their actual hours worked. Despite Claimant's written communications memorializing her actual times worked, her supervisor submitted her scheduled hours. Moreover, on April 22, 2023, Claimant was scheduled to work until 3:00 P.M., however her manager relieved her late. As a result, Claimant clocked out at 3:30 P.M. Despite clocking out at 3:30 P.M., Claimant's time records reflected her pre-scheduled time of 3:00 P.M. Thus, Claimant and, upon information and belief, other NFC Employees were not provided with accurate time records.

Claimant further contends that the Company failed to accurately identify the Company's legal name on NFC Employees' wage statements. Specifically, the Company identified themselves as NFC Amenity Management when they are actually registered in California as TFC Partners, Inc. As a result, NFC Employees are not able to reasonably identify their employer. Additionally, it is Claimant's understanding that the Company failed to maintain her records during her last couple of days of work (June 18, 2023 to June 25, 2023). Instead, after Claimant's multiple inquiries, the Company merely provided Claimant with a card containing her final wages. To date, the Company has yet to produce any records of Claimant's hours worked between June 18, 2023 to June 25, 2023.

Claimant also alleges that the wage statements furnished by the Company to Claimant and other NFC Employees did not reflect the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among other things, as required under the Labor Code.

Furthermore, Claimant alleges that the Company failed to timely pay Claimant and, on information and belief, other former NFC Employees all wages due and owing upon separation of employment, including minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Claimant alleges that she was not timely provided with her final paycheck on her last day of employment, June 25, 2023. Rather, Claimant had to wait seventeen days and make multiple inquiries until the Company finally mailed her final paycheck. Claimant further contends that, on information and belief, other former NFC Employees were not timely paid all wages due and owing upon separation of employment and/or the required waiting time penalties.

Moreover, the Company improperly conducted an extensive background check that included a consumer report as a prerequisite for employment. Upon information and belief, Claimant believes that part of the Company's consumer report included a credit report search on Claimant. Claimant's job requirements did not create a legitimate business need for the Company's invasive consumer report. Specifically, as a concierge, Claimant's duties did not require: a legally enforced credit check, managerial duties, regular access to client's bank or credit information, handling of trade secrets or proprietary information, nor did she regularly have access to \$10,000 or more of cash. Upon information and belief, Claimant also contends that other NFC Employees' jobs were predicated by the overbroad consumer report. Further, the Company failed to provide an opportunity for Claimant, and on information and belief, other NFC Employees to receive a copy of the credit report. Specifically, Claimant's consumer report failed to contain a box for Claimant to check off to receive a copy of the credit report. As a result, Claimant and other NFC Employees were subjected to illegal background checks.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other NFC Employees certain rights afforded to them under the Labor Code and applicable IWC Wage order. Claimant makes these claims against the Company on behalf of herself and all other NFC Employees.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other NFC Employees. The facts and/or claims contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves the right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of herself and other current or former NFC Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES
(Labor Code §§ 204, 226.7, 512, and the “Meal Periods” section of the Applicable IWC Wage Order)

Section 512(a) of the Labor Code provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived....

(D) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to and complies with Labor Code Section 512....

(F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimant and, on information and belief, other NFC Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other NFC Employees are entitled to receive one (1) hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all NFC Employees to the extent permitted by law.

FAILURE TO PROVIDE REST PERIODS AND/OR TIMELY PAY PREMIUM WAGES

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of the Applicable IWC Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof....

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest

period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company failed to authorize and permit Claimant and, on information and belief, other NFC Employees with an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other NFC Employees are entitled to receive one (1) hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of law on behalf of herself and all NFC Employees to the extent allowed by law.

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FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the “Minimum Wages” and “Hours and Days of Work” section of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days.

Labor Code § 1197 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 lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise.”].)

The “Minimum Wages” section of the applicable IWC Wage Order further provides that every employer shall pay to each employee not less than the applicable minimum wage per hour for all hours worked.

Additionally, Labor Code § 1197.1 mandates:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” section of the applicable IWC Wage Order mandates the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

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.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 1198 further states:

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

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 210 also states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure and/or guideline of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other NFC Employees for all hours actually worked on the date designated in advance by the Company as the regular pay day. For instance, the Company did not compensate Claimant and other NFC Employees for time spent performing work duties during their meal periods. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all NFC Employees to the extent permitted by law.

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FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides, in pertinent part, “[a]n 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.”

Labor Code § 2802(b) states, “[a]ll 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.” Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or 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.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required Claimant and other NFC Employees to use their personal cell phones in the discharge of their job duties without adequate reimbursement. Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of herself and all NFC Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174(d) further requires every person employing labor in California to:

[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The “Records” section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing

when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company's failure to properly record meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. The Company further violated the record-keeping requirements by failing to properly identify the Company on their wage statements. Moreover, the Company failed to either maintain, or provide upon request, the records for Claimant's final days of employment. Claimant will pursue all available remedies against the Company for its violations of the law on behalf of herself and all NFC Employees to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 246, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal

entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

Labor Code § 226(h) further states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Company failed to furnish Claimant and other NFC Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate, and/or the employee's identification number or last four digits of their Social Security number. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all NFC Employees to the extent permitted by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Premium wages constitute wages under Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

Labor Code § 202 provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As discussed herein, the Company violated these Labor Code sections by not timely paying to Claimant and other former NFC Employees all minimum, regular, and/or overtime wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. Claimant further received late payment for final wages owed for her last two days of employment with the Company. The Company also did not pay Claimant and, on information and belief, other former NFC Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all former NFC Employees to the extent allowed by law.

FAILURE TO CONDUCT PROPER BACKGROUND CHECKS

(Civil Code § 1785.20.5; Labor Code §§ 1024.5 and 2699 et seq.)

Civil Code §1785.20.5 (a) states that prior to requesting a consumer credit report for employment purposes, the employer shall provide written notice and the notice shall contain a box that the person may check off to receive a copy of the credit report.

Labor Code § 1024.5(a) further provides:

An employer or prospective employer shall not use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following: (1) A managerial position. (2) A position in the Department of Justice. (3) That of a sworn peace officer or other law enforcement position. (4) A position for which the information contained in the report is required by law to be disclosed or obtained. (5) A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment . . . (6) A . . . named Signatory on the bank or credit card account of the employer. . . (7) A position that involves access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret . . . (8) A position that involves regular access to cash totaling ten thousand dollars (\$10,000) or more of the employer, a customer, or client, during the workday.

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Labor Code § 2699(a) further states:

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

As discussed herein, the Company violated these Civil and Labor Codes sections by enforcing an invasive and overbroad background check which included consumer credit reports. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all former NFC Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226.3, 558, 558.1, 1024.5, 1174.5, 1197.1, 2699(a), and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 204, 204(b), and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) further states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Labor Code § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1197.5, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by, among other things, failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to timely pay all regular, minimum, and/or overtime wages; failing to reimburse for necessary business expenses; failing to maintain accurate records; failing to furnish accurate itemized wage statements; and failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties, as required under the Labor Code and the applicable sections of IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of herself and other NFC Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES
(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802(c), and 2698 et seq.)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802(c), and 2698 et seq., among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

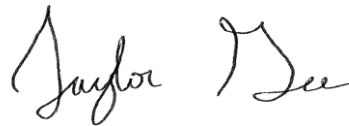
Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by PAGA, on behalf of herself and other NFC Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other NFC Employees of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Civil Code § 1785.20.5; Labor Code §§ 201-204, 210, 226(a), 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and the applicable IWC Wage Order. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all NFC Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other NFC Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read "Taylor M. Gee", written in a cursive style.

Taylor M. Gee

EXHIBIT 2

May 20, 2024

Attorneys at Law

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San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Taylor M. Gee
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619.930.9601 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL (RETURN RECEIPT)

NFC Amenity Management
c/o JACKSON LEWIS P.C.
Shannon Nakabayashi, Esq.
Liam N. Gaarder-Feingold, Esq.
50 California Street, 9th Floor
San Francisco, California 94111-4615

TFC Partners, Inc.
c/o JACKSON LEWIS P.C.
Shannon Nakabayashi, Esq.
Liam N. Gaarder-Feingold, Esq.
50 California Street, 9th Floor
San Francisco, California 94111-4615

**Re: Cassandra Kavathas's PAGA Claims Against NFC Amenity
Management and TFC Partners, Inc.
(Related Matter: LWDA Case No.: LWDA-CM-979860-23)**

Dear California Labor and Workforce Development Agency, NFC Amenity Management, and TFC Partners, Inc.:

Please be advised that Cassandra Kavathas ("Claimant") has retained our firm, GrahamHollis APC, to represent her for various claims against her former employers, NFC Amenity Management and TFC Partners, Inc. (together referred to herein as the "Company" or "NFC").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current and former non-exempt employees of the Company who worked in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code section 2698 et seq., "PAGA"), Labor Code section 2699.3.

Please be advised that concurrent and similar claims have also been filed by our firm in representation of Claimant Angie Phan, LWDA Case No.: LWDA-CM-979860-23. Ms. Phan sent her initial notification via certified mail to the Company on or about September 6, 2023. Ms. Phan subsequently filed her Civil Complaint on December 15, 2023 in the Superior Court of California, County of Alameda,

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

Alyssa Smith

Allison Schubert

Alex Kuner

Dawn M. Berry

Brisa Martinez

Taylor M. Gee

Samara Bahu

*Provisionally Licensed Lawyer

Case No. 23CV05674.

Pursuant to Labor Code section 2699(a), and by way of this letter, Claimant intends to represent herself and all other individuals who currently or formerly performed work for the Company in California during the relevant time period (referred to herein as “NFC Employees”). All NFC Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that she and all other NFC Employees are “Aggrieved Employees” as defined by the PAGA.

FACTUAL BACKGROUND

NFC Amenity Management (“NFC”), also known as TFC Partners, Inc., is a Delaware corporation headquartered in New Jersey, which does business in California in the concierge and management industry. The Company provides concierge and front desk services that cater to high-end multi-family housing and fitness and spa centers. The Company employs a roster of employees from Florida to New York to California. Specifically, the Company staffs at least sixteen multi-family apartments throughout Santa Clara, San Francisco, Oakland, Temecula, and San Diego, California.

Claimant was employed or otherwise performed work for the Company as a manager and concierge in the County of Santa Clara from approximately June 2023 until the Company stopped assigning her shifts on or around August 9, 2023. As a manager, Claimant was responsible for training new hires and creating the work schedules. As a concierge, Claimant was responsible for managing the concierge desk, unlocking doors for guests and delivery personnel, answering residents’ questions, supervising, and assisting with packages, and performing the highest level of customer services to “wow” all clients by exceeding expectations. Originally, Claimant was hired as a manager and was paid \$25 an hour. Though she was scheduled to work from 7:00 A.M. to 3:00 P.M., due to the nature of the work, she was constantly on her phone answering employees’ questions and providing schedule accommodations. Within a month, the Company demoted Claimant to a concierge and reduced her pay to \$21 per hour. Throughout her employment, Claimant typically worked part-time three to four times a week from 7:00 A.M. to 3:00 P.M. and was paid biweekly. At all relevant times, the Company classified Claimant as a non-exempt employee for the purposes of the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. The Company also employed, and continues to employ, other NFC Employees in various non-exempt positions during the relevant statutory period.

Claimant alleges that the Company denied, and continues to deny, Claimant and other NFC Employees the specific rights afforded to them under the Labor Code and the applicable IWC Wage Order. Specifically, the Company failed to provide Claimant and other NFC Employees with legally compliant meal and/or rest periods or pay them meal/or rest period premiums; failed to timely pay all minimum, regular, and/or overtime wages owed; failed to reimburse for necessary business expenses; failed to maintain accurate records; failed to issue accurate itemized wage statements, and failed to timely pay all wages due and owing upon separation of employment. Claimant also contends, based on information and belief, that all policies, practices, procedures and/or guidelines of the Company applicable to Claimant were also applicable to all other NFC Employees throughout the relevant time period.

Claimant alleges that the Company did not provide NFC Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that were free from the employer's control when they worked more than five (5) hours in a day. Claimant asserts that the Company maintained a practice and/or policy that failed to afford Claimant and NFC Employees with the opportunity to take lawful meal periods because the Company required NFC Employees to be available at all times to assist clients. Specifically, the Company understaffed their employees to reduce costs by requiring NFC Employees to place a sign with the company phone number on the unmanned desk and have the NFC Employees monitor the Company phone throughout their breaks to assist clients with tasks like package and food pick-ups, which resulted in late, interrupted, or missed meal breaks. In particular, NFC Employees worked in secured, private, multi-family apartment complexes and were required to unlock the doors and let in various carriers, like Amazon, Uber, and DoorDash drivers, to deliver packages and food to residents. Thus, the Company maintained an impractical work standard since NFC Employees lunches lined up at the typical 11:00 A.M-1:00 P.M. lunch rush, and were therefore constantly interrupted to let in Uber and DoorDash drivers.

Due to the Company culture, nature, and urgency of the tasks, Claimant and other NFC Employees were not able to report the non-complaint meal periods. Consequently, Claimant and, on information and belief, other NFC Employees were not provided with the opportunity to take legally compliant meal periods.

Claimant contends that the Company did not authorize or permit Claimant and other NFC Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or a major fraction thereof. Rather, Claimant and, on information and belief, other NFC Employees were directed, compelled and/or otherwise coerced to work through their rest periods because the Company required them to service their clients throughout their shifts. For example, Claimant was not permitted to take lawful rest periods during her shifts because she was expected to be on-duty to monitor the Company phone for client inquiries throughout the entirety of her shift and unlock the front door for various carriers.

Although Claimant and other NFC Employees did not receive legally compliant meal and/or rest periods, the Company did not timely pay Claimant, and on information and belief, other NFC Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other NFC Employees a meal and/or rest period premium for each workday that Claimant and other NFC Employees were not provided with a compliant meal and/or rest period.

Furthermore, Claimant asserts that she and, on information and belief, other NFC Employees were not timely paid all minimum, regular and/or overtime wages for all time actually worked. As described herein, Claimant and, on information and belief, other NFC Employees typically worked eight (8) hour shifts and consistently worked through their meal periods. However, the Company improperly considered the work Claimant and other NFC Employees performed during their meal periods as non-compensable time and failed to provide any remuneration. Claimant alleges that the Company automatically deducted thirty (30) minutes from her, and on information and belief, other NFC Employees' pay for meal periods, regardless of whether a compliant meal period was actually provided.

As a result of being required to work off-the-clock during meal periods, the Company did not timely pay Claimant and, on information and belief, other NFC Employees regular and overtime wages when Claimant and other NFC Employees worked in excess of 8-hours in a workday and/or 40-hours in a workweek depending on their schedule. Moreover, as a manager, Claimant was constantly on her phone during her off hours to answer questions and make schedule accommodations. As a result, Claimant alleges that she worked well over 8 hours within a workday. However, the Company failed to capture all hours actually worked and therefore failed to compensate Claimant for all regular and overtime hours.

Claimant also alleges that the Company did not reimburse Claimant and other NFC Employees for all necessary business expenses incurred in the discharge of their job duties. For instance, Claimant and, on information and belief, other NFC Employees were required to use their personal cell phones to clock in and out for their shifts and coordinate their schedules with their supervisor. Moreover, as a manager, Claimant was required to use her phone to communicate with NFC Employees. To date, the Company has failed to provide reimbursement for the incurred business expenses. Thus, Claimant and, on information and belief, other NFC Employees did not receive any reimbursement for necessary business expenditures as required by California law.

As a direct result of the Company's illegal policies, practices, procedures, and/or guidelines, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other NFC Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law. For instance, the Company's practice of automatically deducting 30-minutes from Claimant's and, on information and belief, other NFC Employees' timecards for meal periods resulted in inaccurate employment records for Claimant and other NFC Employees. Claimant further alleges that the Company's timekeeping system constantly reflected inaccurate time punches and failed to capture all time actually worked.

Claimant further contends that the Company failed to accurately identify the Company's legal name on NFC Employees' wage statements. Specifically, the Company identified themselves as NFC Amenity Management when they are actually registered in California as TFC Partners, Inc. As a result, NFC Employees are not able to reasonably identify their employer.

Claimant also alleges that the wage statements within Claimant's possession do not reflect the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among other things, as required under the Labor Code.

Furthermore, Claimant alleges that the Company failed to timely pay Claimant and, on information and belief, other former NFC Employees all wages due and owing upon separation of employment, including minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations.

Claimant alleges that the Companies, individually and/or collectively, had and continue to have, a policy, practice, procedure and/or guideline of failing to produce employment records. Claimant requested a copy of her personnel file on October 2, 2023 via certified mail but did not receive the

requested documents within 30 calendar days of the request. To this date, the Company has not produced any documents in response of Claimant's request.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other NFC Employees certain rights afforded to them under the Labor Code and applicable IWC Wage order. Claimant makes these claims against the Company on behalf of herself and all other NFC Employees.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other NFC Employees. The facts and/or claims contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves the right to assert any and all related facts, claims, and/or theories of liability discovered after sending this letter on behalf of herself and other current or former NFC Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES
(Labor Code §§ 204, 226.7, 512, and the "Meal Periods" section of the Applicable IWC Wage Order)

Section 512(a) of the Labor Code provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

In pertinent part, the "Meal Periods" section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes,

except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived....

(D) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to and complies with Labor Code Section 512....

(F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1036 (2012).) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that

are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1103-1114 (2007).)

As set forth above, the Company failed to provide Claimant and, on information and belief, other NFC Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other NFC Employees are entitled to receive one (1) hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all NFC Employees to the extent permitted by law.

FAILURE TO PROVIDE REST PERIODS AND/OR TIMELY PAY PREMIUM WAGES

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of the Applicable IWC Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof....

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 267, 269 (2016).)

In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare

Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company failed to authorize and permit Claimant and, on information and belief, other NFC Employees with an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other NFC Employees are entitled to receive one (1) hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of law on behalf of herself and all NFC Employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the "Minimum Wages" and "Hours and Days of Work" section of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days.

Labor Code § 1197 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 lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36, 44 (2013) [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise."].)

The "Minimum Wages" section of the applicable IWC Wage Order further provides that every employer shall pay to each employee not less than the applicable minimum wage per hour for all hours worked.

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Additionally, Labor Code § 1197.1 mandates:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 510(a), which codifies an employee's right to overtime compensation, provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The "Hours and Days of Work" section of the applicable IWC Wage Order mandates the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court*, 79 Cal.App.4th 1420, 1430 (2000).)

Labor Code § 1194(a) provides:

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.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 1198 further states:

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

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 210 also states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure and/or guideline of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other NFC Employees for all hours actually worked on the date designated in advance by the Company as the regular pay day. For instance, the Company did not compensate Claimant and other NFC Employees for time spent performing work duties during their meal periods. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all NFC Employees to the extent permitted by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides, in pertinent part, “[a]n 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.”

Labor Code § 2802(b) states, “[a]ll 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.” Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or 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.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required Claimant and other NFC Employees to use their personal cell phones in the discharge of their job duties without adequate reimbursement. Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of herself and all NFC Employees to the extent allowed by law.

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FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174(d) further requires every person employing labor in California to:

[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The “Records” section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company’s failure to properly record meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. The Company further violated the record-keeping requirements by failing to properly identify the Company on their wage statements. Claimant will pursue all available remedies

against the Company for its violations of the law on behalf of herself and all NFC Employees to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 246, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

Labor Code § 226(h) further states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Company failed to furnish Claimant and other NFC Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate, and/or the employee’s identification number

or last four digits of their Social Security number. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all NFC Employees to the extent permitted by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Premium wages constitute wages under Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

Labor Code § 202 provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As discussed herein, the Company violated these Labor Code sections by not timely paying to Claimant and other former NFC Employees all minimum, regular, and/or overtime wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. The Company also did not pay Claimant and, on information and belief, other former NFC Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all former NFC Employees to the extent allowed by law.

FAILURE TO PRODUCE EMPLOYMENT RECORDS FOR INSPECTION

(Labor Code §§226(c), 1198.5, and “Records” section of the Applicable IWC Wage Order)

The Records section of the applicable IWC Wage Order states that all required records shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California, and an employee’s records shall be available for inspection by the employee upon reasonable request.

Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to inspect or copy records pertaining to a current or former employee shall comply with the request as soon as practicable, but not later than 21 calendar days from the date of the request. Under § 226(f), a failure by an employer to permit a current or former employee to inspect or copy records within the 21-day period entitles the employee to recover a \$750 penalty from the employer.

Pursuant to Labor Code § 1198.5, every current and former employee has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. The employer must make the contents of the personnel records available for inspection to the current or former employee no later than 30 days from the date the employer receives a written request. If an employer fails to permit a current or former employee to inspect or copy personnel records, the employee may recover a penalty of \$750 from the employer.

On October 2, 2023, Claimant sent an employment records request to her former employer with an enclosed signed authorization form. Based on the certified mail return receipt, NFC Amenity Management's Agent for Service of Process received the records request on October 16, 2023. To date, Claimant has not received any documents pertaining to her employment nor received any communication to coordinate the copying of said documents. As such, Claimant is entitled to the \$750 penalty as provided by Labor Code § 226(c) and the \$750 penalty as provided by Labor Code § 1198.5, for a total penalty of \$1,500.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, 2699(a), and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 204, 204(b), and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

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Labor Code § 558.1(a) further states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Labor Code § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1197.5, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by, among other things, failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to timely pay all regular, minimum, and/or overtime wages; failing to reimburse

for necessary business expenses; failing to maintain accurate records; failing to furnish accurate itemized wage statements; and failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties, as required under the Labor Code and the applicable sections of IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of herself and other NFC Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802(c), and 2698 et seq.)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802(c), and 2698 et seq., among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by PAGA, on behalf of herself and other NFC Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other NFC Employees of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Labor Code §§ 201-204, 210, 226(a), 226(c), 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802; and the applicable IWC Wage Order. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all NFC Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

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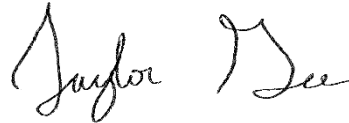
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Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other NFC Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read "Taylor M. Gee". The signature is fluid and cursive, with the first name "Taylor" and last name "Gee" clearly distinguishable.

Taylor M. Gee
Attorney at Law

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ALAMEDA		ELECTRONICALLY FILED Superior Court of California, County of Alameda 08/14/2024 at 12:18:12 PM By: Darrell Drew, Deputy Clerk
TITLE OF CASE (ABBREVIATED): <i>Angie Phan v. TFC Partners, Inc. dba NFC Amenity Management</i>		
ATTORNEY(S) NAME AND ADDRESS: Vilmarie Cordero, Esq. (SBN: 268860) Taylor M. Gee, Esq. (SBN: 349199) Graham Hollis APC 3555 Fifth Avenue Suite 200 San Diego, California 92103	TELEPHONE 619.692.0800 FACSIMILE 619.692.0822	
ATTORNEYS FOR: Plaintiffs Angie Phan and Cassandra Kavathas	HEARING: DATE-TIME-DEPT	CASE NUMBER 23CV056741

PROOF OF SERVICE

I, Andrea Gorriño, declare: that I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 3555 Fifth Avenue Suite 200, San Diego, California 92103. On August 12, 2024, I served the following document(s):

- **FIRST AMENDED COMPLAINT: REPRESENTATIVE ACTION FOR NON-INDIVIDUAL CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code §§ 2698 et seq.)**

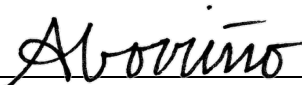
Upon:

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d/b/a NFC Amenity Management

☒ **(BY ELECTRONIC TRANSMISSION)** Pursuant to Civil Procedure section 1010.6, subd. (e), I caused the document(s) to be sent electronically to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 12, 2024 in San Diego, California.



Andrea Gorriño