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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAY 31 2024

BY: Khiyara Frontela
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

Percy Jenkins, individually and on behalf of all similarly situated individuals,

Plaintiff,

vs.

Beacon Property Management, Inc., a California corporation; **James Notley**, an individual; and **Does 1-100**;

Defendants.

CASE NO. CIV SB 2417563

CLASS ACTION COMPLAINT FOR:

1) **Failure to Pay Minimum Wages;**
2) **Failure to Pay Overtime Wages;**
3) **Failure to Provide Meal Periods or Premium Pay in Lieu Thereof;**
4) **Failure to Provide Rest Periods or Premium Pay in Lieu Thereof;**
5) **Failure to Reimburse Necessary Business Expenses;**
6) **Failure to Provide and Maintain Accurate Records;**
7) **Failure to Pay Wages When Due During Employment and at Separation;**
8) **PAGA Penalties; and**
9) **Violation of California's Unfair Competition Law**

<u>Jury Trial Requested</u>

Plaintiff Percy Jenkins ("Plaintiff"), on behalf of himself and all other similarly situated current and former employees ("Class Members"), by and through his counsel of record, alleges as follows against Beacon Property Management, Inc., James Notley, and DOES 1-100 (collectively, "Defendants"):

PARTIES

1. Plaintiff **Percy Jenkins** is a resident of Redlands, San Bernardino County, California. Plaintiff was as an hourly, non-exempt employee of Defendants working as a residential property maintenance worker from approximately September 15, 2022 to October 3, 2023. Plaintiff Percy Jenkins was subject to the policies and practices described in this Complaint at all times during his employment with Defendants.

2. Defendant **Beacon Property Management, Inc.** is a California corporation and is a landlord for residential properties. On information and belief, Beacon Property Management, Inc. has employed at least 150 hourly, non-exempt employees in a variety of capacities through the four years leading to this Complaint within the state of California. Beacon Property Management, Inc. is a California stock corporation with its principal place of business at 8247 White Oak Avenue, Rancho Cucamonga, CA 91730.

3. Defendant **James Notley** is the Chief Executive Officer, Secretary, and Chief Financial Officer of Beacon Property Management, Inc., and on information and belief is a resident of the County of San Bernardino. Upon information and belief, he violated or caused to be violated the regulations and statutes described in greater detail below. Since James Notley is a managing agent, director, and/or officer of Beacon Property Management, Inc. and because he violated or caused to be violated the statutes at issue in this action, he is personally liable for the Labor Code violations and PAGA penalties complained of herein per Labor Code § 558.1.

4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-100. Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of the causes of action asserted, either through its own conduct, or vicariously through the conduct of others. Further references in this complaint to any named Defendants includes the fictitiously named defendants.

5. At all times alleged herein, each Defendant was an agent, servant, joint employer, employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants' relationship. Moreover, the conduct of every Defendant was ratified by each Defendant.

VENUE AND JURISDICTION

6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California statutes and law, including the Labor Code and Business & Professions Code. Because Defendants conduct substantial business in San Bernardino County, Defendants are within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

7. Venue as to Defendants is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendant Beacon Property Management, Inc.'s principal place of business is located in Rancho Cucamonga, California in the County of San Bernardino. A substantial amount of the unlawful acts alleged have directly affected Plaintiff, and similarly situated employees, in San Bernardino County, where Plaintiff was employed by Defendants and earned wages at issue in this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

CLASS ACTION ALLEGATIONS

8. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit non-exempt employees the right to take timely, compliant, uninterrupted, and/or duty-free meal and rest breaks pursuant to Labor Code § 226.7 based on, at least, the following uniform policies and practices.

9. *First*, Defendants implemented a policy and practice that required Plaintiff and Class Members to remain on-call during meal and rest breaks by being required to listen for and respond to calls and messages from Defendants even when they were on a meal or rest period. These policies prohibited employees from using meal and rest periods in a manner of their choosing, free from their employer's dominion and control.

10. *Second*, Defendants, in fact, interrupted Plaintiff and Class Members during

their meal and rest periods to discuss work-related matters and/or instruct them on pending tasks but did not allow them to clock back in, record this time as compensable time, or provide them with a compliant meal or rest period.

11. In failing to authorize and/or permit timely and/or uninterrupted meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees. Defendants denied compensation in lieu of meal and rest periods, including premium wages owed, notwithstanding their actual knowledge that such employees were uniformly denied compliant meal and rest periods.

12. Additionally, by requiring employees to work during their meal periods but preventing them from recording that time, Plaintiff and Class Members were forced to work off the clock and deprived of owed straight time wages. Additionally, as Class Members worked shifts of at least 8 hours, or weeks of at least 40 hours, or for days of work without one day's rest in seven, some of this time was required to be paid at overtime rates, but was not done so.

13. As part of its operational policies and practices, Defendants required Plaintiff and other Class Members to be on-call so that someone was always available in case of emergencies, and to ensure speedy interactions with tenants. Defendants controlled Plaintiff and other Class Members during on-call time and required that they remain available to respond to calls and be able to arrive at assigned properties within about 30 minutes. They were also not permitted to consume alcohol while on-call, go to social events, or leave the area where the properties were located. Nor were employees generally able to swap on call responsibilities if they had personal business to attend to.

14. However, Defendants did not properly compensate Plaintiff and other Class Members for their time spent on-call because Defendants prohibited employees from recording all compensable hours spent on-call while waiting and by refusing to pay overtime for hours spent on call. These policies and practices resulted in the Class being deprived of at least minimum wage for all hours worked, and being deprived of earned overtime wages.

15. Defendants also implemented a policy and practice whereby they required

employees to record inaccurate time entries for overtime and on-call hours, by being prohibited from recording the full amount of hours worked, and instead only recording a reduced number of hours. This illegally resulted in employees being uncompensated at least some of their overtime and/or on-call hours.

16. Finally, Plaintiff and Class Members were not reimbursed for necessary business expenditures, such as using their cellular phones to discharge their duties.

17. Accordingly, Plaintiff brings this action on behalf of himself and as a class action on behalf of the following defined Class:

18. **<u>Non-Exempt Employee Class</u>:**

All non-exempt, hourly employees who worked at least one 3.5-hour shift for Defendants in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

19. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

20. **<u>Numerosity.</u>** Plaintiff is informed and believes that, during the class period, at least 150 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

21. **<u>Typicality.</u>** Plaintiff's claims are typical of all Class Members. Like all other Class Members, Plaintiff was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

22. **<u>Adequacy.</u>** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery,

certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

23. <u>**Existence and Predominance of Common Issues.**</u> Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

a. Whether Defendants have a common policy and/or practice of failing to accurately record non-exempt employees' time;

b. Whether Defendants have a common policy and/or practice of failing to accurately compensate non-exempt employees for all time worked;

c. Whether Defendants unlawfully required Plaintiff and Class Members to remain under Defendants' control and direction while off-the-clock;

d. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members at a minimum wage for all hours worked;

e. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required overtime wages;

f. Whether Defendants have a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

g. Whether Defendants unlawfully required Plaintiff and Class Members to remain under Defendants' control and direction while on meal and/or rest periods;

h. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

i. Whether Defendants paid Plaintiff and Class Members all required premium wages for non-compliant meal and/or rest periods;

j. Whether Defendants have a common policy and/or practice of failing to reimburse employees for necessary business expenditures;

k. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;

l. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;

m. Whether Defendants have a policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

n. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

o. Whether Defendants have a policy and/or practice of failing to timely pay wages during employment in violation of Labor Code §§ 204, 210.

p. Whether Defendants have a policy and/or practice of failing to pay Plaintiff and Class Members final wages owed upon termination;

q. Whether Defendants unlawfully and/or willfully failed to promptly pay compensation due to Plaintiff and Class Members upon termination of employment in violation of Labor Code §§ 201, 202, and 203;

r. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;

s. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and

t. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by treating Plaintiff and Class Members unfairly by depriving them of meal and/or rest periods, failing to provide them with compensation in lieu of meal and/or rest periods, failing to pay all regular and overtime wages earned, failing to pay wages upon termination, failing to furnish accurate and timely itemized wage statements upon payment of wages, and failing to pay all compensation due upon discharge.

24. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates providing individual notice to members of the Class through Defendants' records.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198

Failure to Pay Minimum Wages for All Hours Worked

(Plaintiff and Class Against Defendants)

25. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

26. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(L) (defining "Hours Worked").

27. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required and/or pressured

Class Members to work off-the-clock and/or while on-call without compensating all time spent under Defendants' control.

28. As part of this practice, Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required Plaintiff and Class Members to be on-call during their putative meal periods, but were not paid for this time because it was not recorded as time worked. Additionally, Defendants' timekeeping policies and practices required employees to record inaccurate time entries for overtime and on-call hours by prohibiting employees from recording the full number of hours worked whether on call or in excess of 8 hours per day or 40 hours per week. This illegally resulted in employees being uncompensated for least some of their overtime and/or on-call hours at their regular rate.

29. Defendants' failure to pay Plaintiff and Class Members minimum wages for all hours worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

30. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, applicable civil penalties, and reasonable attorney's fees and costs.

<u>SECOND CAUSE OF ACTION</u>

California Labor Code §§ 510 and 1198

Failure to Pay Overtime Wages

(Plaintiff and Class Against Defendants)

31. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

32. California Labor Code sections 510, 1198, and Industrial Wage Order No. 5 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis. Specifically, Industrial Wage Order No. 5 provides that Defendants were required to pay Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a workweek,

at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

33. Throughout the Class Period, Plaintiff and Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and/or in excess of 40 hours in a week because all hours worked were not recorded as compensable time as a direct consequence of Defendants' policies and practices, including without limitation its meal and rest period, on-call time , and off the clock work policies and/or practices.

34. Because Plaintiff and Class Members worked shifts of more than eight hours a day or forty hours a week on the clock, some of this work qualified for overtime premium pay. Therefore, Plaintiff and Class Members were not paid overtime wages at the correct rate of pay for all of the overtime hours worked. Defendants knew or should have known that their policies and practices forced Plaintiff and Class Members to work in excess of eight hours per workday and/or 40 hours per workweek without being compensated for all hours worked.

35. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees, and applicable civil penalties.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Failure to Provide Meal Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendants)

36. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

37. Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law,

first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-104 (2012). An employee is also entitled to a second meal period for shifts in which the employee works in excess of ten hours.

38. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC, including Industrial Wage Order No. 5. “An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer’s obligation is to provide an off-duty meal period: an uninterrupted 30–minute period during which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012). The employee must also be “free to leave the premises.” *Id.* at 1036.

39. Defendants also failed to relieve Plaintiff and Class Members from all duty when on their meal period by requiring Plaintiff and Class Members to comply with an unlawful and systematic policy and practice whereby Defendants required Plaintiff and Class Members to remain on-call during all meal periods. Additionally, Defendants pressured Plaintiff and Class Members to prioritize completing assigned work by working through their meal periods, skipping them, or by interrupting their meal periods, or by taking them late. Numerous Class Members, including Plaintiff, were required to take late meal periods, skip them, interrupt them, or remain on duty due to the combination of Defendants’ scheduling practices and policies.

40. Defendants did not pay Plaintiff and Class Members all meal period premium wages when meal periods were missed, interrupted by work, and taken late, in violation of Wage Order No. 5 and Labor Code sections 226.7 and 512(a).

41. Defendants’ conduct violates Wage Order No. 5 and Labor Code sections 512(a), 226.7, and 1198. Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided, and interest thereon, along with applicable civil penalties.

FOURTH CAUSE OF ACTION

California Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendants)

42. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

43. At all times relevant to this complaint, Defendants knew it was obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

44. Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

45. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order No. 5. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of rest."[1] *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

46. Employees must also be free to leave the employer's premises during their rest period. *See id.* at 270 ("In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer

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[1] Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, "Rest Periods/Lactation Accommodations," *available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time."); *see also* Department of Industrial Relations, "Rest Periods," *available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

47. Defendants failed to relieve Plaintiff and Class Members from all duty when on their rest period by requiring Plaintiff and Class Members to comply with an unlawful and systematic policy and practice that interfered with their ability to take compliant rest periods whereby they required Plaintiff and Class Members to remain on-call throughout rest periods. Additionally, Defendants pressured Plaintiff and Class Members to prioritize completing assigned work by working through their rest periods, skipping them, or by interrupting their rest periods.

48. As a direct and proximate result of Defendants' willful and unlawful conduct, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed or non-compliant rest periods, in an amount to be established at trial.

49. Pursuant to Wage Order No. 5 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

<u>FIFTH CAUSE OF ACTION</u>

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendants)

50. Plaintiff repeats and incorporates by reference every allegation in this complaint as if fully set forth herein.

51. Labor Code section 2802 provides that "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer." Lab. Code § 2802.

52. Defendants failed to reimburse Plaintiff and Class Members for all business-related expenses that were necessary to perform their job, including requiring Plaintiff and the Class to temporarily use of their personal cell phones for Defendants' business. *See Cochran v. Schwan's Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

53. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for the costs Plaintiff and Class Members incurred plus attorneys' fees and costs. Lab. Code § 2802.

SIXTH CAUSE OF ACTION

California Labor Code §§ 226(a)/(f)/(h), 226.3, and 1174(d)

Failure to Provide and Maintain Accurate Records

(Plaintiff and Class Against Defendants)

54. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

55. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) net wages earned; and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

56. At all times relevant to this complaint, Defendants' failure to pay premium wages for missed meal and rest periods and minimum and/or overtime wages for work-off-the-clock rendered Class Members' wage statements inaccurate by failing to accurately reflect Plaintiff's and Class Member's time worked, as well as gross and net wages earned.

57. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about

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how much compensation was owed.

58. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty ($50) dollars for the initial violation and one hundred ($100) dollars for each subsequent violation, up to $4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

59. Additionally, Defendants' actions in regard to Labor Code § 248.2(d)(2)(A) constitute violations of Labor Code sections 233 and 245, *et seq*. As a result, Plaintiff and the Class are accordingly entitled to all applicable civil penalties, and reasonable attorney's fees and costs in an amount subject to proof at trial. Lab. Code §§ 233 and 245, *et seq*.

SEVENTH CAUSE OF ACTION

California Labor Code §§ 201, 202, 203, 204, 210

Failure to Pay Wages When Due

(Plaintiff and Class Against Defendants)

60. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

61. Labor Code § 201 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages[2] 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. Notwithstanding any other provision of law,

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[2] Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment." Additionally, in *Naranjo v. Spectrum Security Services, Inc.,* 13 Cal. 5th 93 (2022), the California Supreme Court recently held that failure to pay premiums for violating the California Labor Code's meal and rest break provisions constitutes "wages" for purposes of waiting time penalties.

an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of quitting.

62. Defendants do not include definite periods of service in their contracts of employment for Class Members employed at their California properties. Plaintiff's contract of employment did not include a definite term.

63. Labor Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with § 201, 201.5, 202, and 205.5, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

64. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

65. <u>Failure to Timely Pay Wages Due.</u> As set forth above, Defendants failed to timely pay the minimum wages, overtime wages, and meal and rest period premiums resulting from its deficient timekeeping and meal and rest period policies upon its regularly scheduled paydays.

66. <u>Relief.</u> Defendants' failure to pay Plaintiff and those Class Members wages on their regularly scheduled pay dates subjects Defends to civil penalties in the amount of $100 per employee per initial violation and $200 per employee for every subsequent violation of Labor Code § 204 pursuant to Labor Code § 210.

67. <u>Failure to Pay Upon Termination.</u> Plaintiff and many Class Members have left Defendants' employ during the Class Period. As discussed above, Defendants knowingly failed to pay Plaintiff and Class Members all earned wages upon termination. Instead, Defendants willfully and intentionally refused to pay the earned rest and/or meal period premiums and earned minimum wages as alleged herein to Plaintiff and Class Members in

violation of Labor Code §§ 201 and 202.

68. Relief. Defendants' failure to pay Plaintiff and those Class Members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment, violates Labor Code §§ 201 and 202. Plaintiff and Class Members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under Labor Code § 203.

EIGHTH CAUSE OF ACTION

California Labor Code §§ 558, 2698, et seq.

Private Attorneys General Act ("PAGA") Penalties

(Plaintiff and Class Against Defendants)

69. Plaintiff repeats and incorporates by reference all the allegations of this Complaint as though fully set forth herein.

70. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of himself and other current or former employees as well as the general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and are allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five percent to the affected employees.

71. These penalties may be "stacked" separately for each of Defendants' violations of the Labor Code. *See, e.g.*, *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers' compensation.").

72. Plaintiff is an "aggrieved employee" under PAGA, as he employed by Defendants during the applicable statutory period and suffered the Labor Code violations

alleged herein. Accordingly, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 248, 248.2, 248.5, 510, 512, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1401, 2802, 2698, *et seq*., and Industrial Wage Order No. 5, plus reasonable attorneys' fees and costs.

73. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

74. Labor Code § 2699(a), which is part of PAGA, provides:

75. 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 themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

76. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

77. For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

78. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) $100 per initial violation per employee per pay period, and $200 for each subsequent violation per employee per pay period.

79. Labor Code sections 1194.2 and 1197.1 authorize employees to recover liquidated damages in an amount equal to the wages unlawfully withheld and interest thereon. Labor Code 1197.1 also authorized civil penalties as follows: $100 for any initial violation intentionally committed per employee per pay period in which a violation occurs, and $250 per subsequent violation per employee per pay period in which a violation occurs, regardless of whether the first violation was intentional.

80. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart form, any other penalty provided in this article) in the amount of $100 per employee per initial violation of the timely payment requirements of Labor Code § 240 (semimonthly payments) and $200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld.

81. Labor Code § 558 provides: (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid.

82. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 5 as alleged in this Complaint.

83. <u>Procedural Requirements Met.</u> On May 30, 2024, Plaintiff electronically filed a notice of claims with the LWDA and sent a copy to Defendants by certified mail. Plaintiff has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in the notice. As of 65 days from date of electronic filing, *i.e.*, August 3, 2024, all requirements for administrative exhaustion for bringing these PAGA claims will

have been met.[3] Labor Code § 2699.3(a)(2). A true and correct copy of Plaintiff's PAGA Notice is attached herein as **Exhibit A.**

<u>NINTH CAUSE OF ACTION</u>

California Business and Professions Code §§ 17200, et seq.

Violation of California's Unfair Competition Law

(Plaintiff and Class Against Defendants)

84. Plaintiff repeats and incorporates by reference every allegation in this complaint as if fully set forth herein.

85. Defendants are each a "person" as defined by California Business & Professions Code § 17201, as it is a natural person, corporation, firm, partnership, joint stock company, and/or association.

86. <u>Unlawful Business Practices.</u> Defendants' knowing violations of the Labor Code and IWC Wage Order No. 5 constitute an unlawful business practice as set forth in Business & Professions Code § 17200, *et seq*.

87. Defendants' failure to abide by the laws discussed herein provide Defendants an unfair advantage over their competitors at the expense of their workers. Instead, Defendants cut corners in the name of higher profits and at the expense of employee well-being. Defendants' action thereby constitutes an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, *et seq*.

88. <u>Relief.</u> Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendants' willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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[3] *See, e.g.*, *Magadia v. Wal-Mart Assocs., Inc.*, 319 F. Supp. 3d 1180, 1188–89 (N.D. Cal. 2018); *Donnelly v. Sky Chefs, Inc.*, 2016 WL 9083158, at *2 (N.D. Cal. 2016); *Bradescu v. Hillstone Rest. Grp., Inc.*, No. SACV 13-1289-GW RZX, 2014 WL 5312546, at *10 (C.D. Cal. Sept. 18, 2014), *order confirmed*, No. SACV 13-1289-GW RZX, 2014 WL 5312574 (C.D. Cal. Oct. 10, 2014).

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

A. For an Order:

  a. Certifying the Class;

  b. Appointing Plaintiff as representative of the Class;

  c. Appointing Plaintiff's counsel as Class Counsel;

B. For actual and liquidated damages according to proof at trial;

C. For statutory and civil penalties and special damages, according to proof at trial;

D. For pre- and post-judgment interest on monetary damages;

E. For preliminary and permanent injunctive relief;

F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

G. For such other relief as this Court deems just and proper.

Dated: May 30, 2024

Respectfully submitted,

KING & SIEGEL LLP

By: Elliot J. Siegel

Elliot J. Siegel, Esq.
Lawrence W. Beall, Esq.
Attorneys for Plaintiff and the Putative Class

Exhibit A

King & Siegel LLP

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May 30, 2024

Original filed online via the LWDA's PAGA Claim Notice Portal

Labor & Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Copy Sent via certified mail to:

BEACON PROPERTY MANAGEMENT, INC.
8247 White Oak Avenue
Rancho Cucamonga, CA 91730

JAMES NOTLEY
8247 White Oak Avenue
Rancho Cucamonga, CA 91730

Re: Percy Jenkins v. Beacon Property Management, Inc.

To Whom it May Concern:

We represent Percy Jenkins ("Plaintiff") against defendants Beacon Property Management, Inc. and James Notley (collectively, "Defendants") in a Class Action and representative PAGA lawsuit filed against Defendants in San Bernardino County Superior Court (the "Action"). A copy of the Complaint to be filed in the Action is enclosed as **Exhibit A**.

As set forth in greater detail in the Complaint, Defendants violated their obligations under the California Labor Code by (1-2) failing to provide minimum and overtime compensation pursuant to Lab. Code §§ 510, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198; (3-4) failing to provide rest and meal breaks pursuant to Lab. Code §§ 226.7(b), 512(a), and 1198; (5) failing to reimburse necessary business expenses; (6) failing to provide and maintain complete and accurate wage statements pursuant to Lab. Code §§ 226, 226.3, and 1174; (7) failing to provide wages when due pursuant to Lab. Code §§ 201-204; and (8) failing to reimburse employees for business expenditures pursuant to Lab. Code § 2802.

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Together with this correspondence, the enclosed Complaint serves as notice pursuant to Labor Code § 2699.3, *et seq*. that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of those of Defendants' employees employed from one year prior to filing of this Notice through trial (the "Aggrieved Employees") for the Labor Code violations asserted in the Complaint. *See* Cal. Lab. Code §§ 2699, *et seq.*

Please feel free to contact us with any questions.

Sincerely,

Elliot J. Siegel

Elliot J. Siegel
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