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

KODY HORNBURG, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PACIFICA COMPANIES, LLC; PROSPECT
HOSPITALITY, LP; and DOES 1 through 20,

Defendants.

Lead Case No. 37-2023-00002433-CU-OE-CTL
Consolidated: 37-2023-00020893-CU-OE-CTL

*Assigned to the Hon. Kenneth J. Medel
Dept. C-66*

CLASS ACTION

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Overtime Wages
2. Failure to Pay All Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Pay All Sick Leave Wages
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Unfair Competition
10. Civil Penalties Under the Private Attorneys
General Act

1 Plaintiff KODY HORNBURG, via substituted Plaintiff MINA LALLY, (“Plaintiff”), brings
2 this SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against
3 Defendants PACIFICA COMPANIES LLC; PROSPECT HOSPITALITY LP; and DOES 1 through
4 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. Defendants own and operate hotels throughout the Western United States, including
7 California and Hawaii. Plaintiffs worked for Defendants in California as hourly non-exempt
8 employees who earned incentive-based compensation. The wages of Plaintiffs and class members—
9 overtime, paid sick leave, and meal/rest period premiums—were underpaid because Defendants failed
10 to include all forms of remuneration in the “regular rate” of pay/compensation for those earnings.

11 2. In addition, Defendants engaged in a pattern and practice of prohibiting or impeding
12 Plaintiffs and other non-exempt employees from taking a meal and rest periods, not paying related
13 meal or rest period premiums, and then requiring such employees to submit “time correction” slips
14 that falsely showed they had taken a meal period when they, in fact, had not. This practice not only
15 deprived employees of premium pay, but required them to work off-the clock without pay in violation
16 the applicable minimum wage provisions and also violated applicable overtime laws as such pay was
17 not included in overtime calculations.

18 3. As a result, Plaintiff brings this lawsuit to recover, on her own behalf, the
19 underpayments along with the related penalties, interest, attorneys’ fees, and other amounts.

20 4. Plaintiff also brings class and representative claims for unpaid wages, meal and rest
21 period premiums, and other statutory and civil penalties as further alleged herein

22 **JURISDICTION & VENUE**

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

25 6. The monetary damages and restitution sought by Plaintiff exceed the minimal
26 jurisdiction limits of the Superior Court.

27 7. This Court has jurisdiction over Defendants because, upon information and belief,
28 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise

intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court under Code of Civil Procedure section 395 because Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. The Plaintiff

9. Plaintiff Hornburg was an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2020 to July 2022. Plaintiff worked as a Bell and Valet Attendant. Plaintiff Hornburg died on May 30, 2023.

10. Plaintiff Mina Lally is, and at all relevant times alleged herein was, an individual resident of the State of California, County of San Diego, and an employee of Defendants PACIFICA COMPANIES, LLC and PROSPECT HOSPITALITY, LP, at the La Valencia Hotel from approximately November 2016 through July 15, 2022. At all times alleged herein, the Defendants suffered and permitted Plaintiff Lally to work for them and jointly exercised control over the wages, hours or working conditions of Plaintiff.

11. On February 23, 2024, the Court granted Plaintiff Mina Lally's Motion to Intervene and be substituted into this matter as the new representative plaintiff.

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

B. Defendants Pacifica and Prospect

13. Defendant Pacifica Companies LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county. Defendant Pacifica Companies appears on various employment policies and records and, on information and belief, operated as the employer entity of Plaintiff and other class members along with Prospect Hospitality.

1 14. Defendant Prospect Hospitality LP is a California limited partnership that maintains
2 operations and conducts business throughout the State of California, including in this county.
3 Defendant Prospect Hospitality appears as Plaintiff's employer of record on her paystub and, on
4 information and belief, operated as the employer entity of Plaintiff and other class members along
5 with Pacifica.

6 15. The true names and capacities, whether individual, corporate, or otherwise, of the
7 parties sued as DOES 1 through 20, are presently unknown, unascertainable, or uncertain to Plaintiffs,
8 who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
9 informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiff and is responsible
10 in some manner for the acts and omissions alleged herein. Plaintiff may seek leave to amend this
11 Complaint to reflect their true names and capacities once ascertained.

12 16. Plaintiff is informed, believes, and alleges that all Defendants in this action are
13 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
14 of the Defendants exercised control over the wages, hours, and working conditions of Plaintiff and
15 other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as
16 employees under California law.

17 17. Plaintiff is informed, believes, and alleges that at least some of the Defendants have
18 common ownership, common management, interrelationship of operations, and centralized control
19 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
20 responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558,
21 558.1, and 1197.1.

22 18. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
23 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
24 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such
25 that the acts and omissions of each defendant may be legally attributable to all others.
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CLASS ALLEGATIONS

19. Plaintiff brings this action individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

20. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

21. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: Although the precise membership of the entire class is unknown to Plaintiffs at this time, Plaintiffs estimate the class to exceed 50 individuals. The class members are so numerous that joinder of all class members is impracticable. The identity of class members is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. Plaintiffs and class members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiffs and Class Members. Proof of common unlawful business practices, which Plaintiffs experienced and are representative of, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative. Plaintiff will take all necessary steps to adequately and fairly represent and protect the interests of the class. Plaintiff has no interests antagonistic to other class members. Plaintiff is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

1 d. Superiority: A class action is superior to other means for adjudicating this
2 dispute. Individual joinder is impractical. Class treatment will allow for
3 common issues to be resolved in a single forum, simultaneously, and without
4 duplication of effort and expense.

5 e. Public Policy Considerations: Certification of this lawsuit as a class action
6 advances the State of California's strong public interest in ensuring its
7 approximately millions of employed residents are properly paid the wages they
8 earned for the hours they worked. Class actions provide a mechanism for
9 enforcement of labor laws and allow for vindication of employee rights by
10 unnamed class members.

11 22. Common questions of law and fact as to the class members predominate over questions
12 affecting only individual members. The common questions of law and fact exist as to whether the
13 employment policies and practices formulated by Defendants and applied to the class members violate
14 California law.

15 **GENERAL ALLEGATIONS**

16 23. At all times alleged herein, Plaintiff Lally was a non-exempt employee earning a base
17 hourly wage plus tips. From the start of her employment in 2016, Plaintiff Lally primarily worked as
18 a bartender, host, server or busser, all of which consisted of non-exempt duties.

19 24. From approximately April 2019 through the end of her employment, Plaintiff Lally was
20 a "Pool Bartender" and her job duties consisted of standard non-exempt bartender duties of making
21 drinks, taking food and drink orders, bussing, delivering food and beverage orders and closing out
22 tabs.

23 25. Starting in approximately December 2020, Plaintiff Lally's job title was "Pool
24 Supervisor" and her job duties expanded to include managing and scheduling staff members, taking
25 inventory, creating cocktail menus, bartending, serving tables, and bussing tables. Despite assuming
26 some managerial tasks, at all times Plaintiff Lally remained a non-exempt employee.

27 26. During the entire course of her employment, Plaintiff Lally was required to clock-in at
28 the beginning of her shift and clock-out at the end of her shift.

1 27. Throughout her employment, Plaintiff Lally was routinely impeded or prohibited from
2 taking a meal or rest period each workday as Defendants failed to relieve her of all job duties and
3 failed to relinquish control over her activities due to numerous factors including staffing shortages, a
4 lack of trained personnel scheduled or made available by Defendants to assume her duties during a
5 meal or rest period, and work demands placed on her by supervisors to the extent she could not take a
6 meal period or a rest period. Also, she was not paid premium pay for missed meal or rest periods.

7 28. Defendants knew that Plaintiff Lally was unable to take her meal and rest periods yet
8 maintained a policy wherein she was instructed to complete paper-based time sheet correction slips
9 that manually altered her time records to indicate that Plaintiff Lally had taken a 30-minute unpaid
10 meal period when, in fact, she had not. When Plaintiff Lally objected and opposed these instructions,
11 her supervisors told her she must show a lunch every day under company policy, whether she took
12 one or not.

13 29. Thus, Plaintiff Lally's daily time records failed to include, or compensate her for, at
14 least 30 minutes of work each workday, which became off-the-clock work time for which Plaintiff
15 Lally should have been paid. Furthermore, the failure to include these 30 minutes as hours worked
16 caused Plaintiff Lally to receive less than the minimum wage.

17 30. In addition, this practice caused Plaintiff Lally's overtime compensation to be less than
18 what was owed, as her daily time records did not count at least 30 minutes of work as hours worked
19 for overtime purposes.

20 31. Defendants also violated applicable overtime laws because they routinely failed to
21 include service charges in their calculation of the "regular rate of pay" under California law.

22 32. For example, Defendants paid Plaintiff and other class members bonuses and other
23 forms of remuneration that Defendants failed to include in the overtime rate when employees worked
24 overtime hours. Defendants paid overtime to Plaintiffs and the class members at 1.5x their straight
25 hourly rate. For each overtime hour they worked during the period in which Plaintiff and the class
26 members earned commissions or bonuses, Defendants should have (but failed to) pay overtime "at a
27 rate of no less than one and one-half times the regular rate of pay for an employee" and "twice the
28

regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

33. Prior to her separation from employment, Plaintiff Lally was also promised a raise in her hourly compensation. Defendants failed and refused to pay Plaintiff Lally the increased hourly wage for at least two or three months resulting in Plaintiff Lally not receiving all promised compensation and causing her overtime compensation to be less than what was owed.

34. Plaintiff Lally was not paid all wages owed to her within 72 hours of her resignation as required by California law and such failure was deliberate and intentional by Defendants.

35. Additionally, to the extent class members earned paid sick leave, Defendants violated Labor Code section 246(l) and 247 *et seq.* because sick leave was not paid at the lawful regular rate of pay throughout the relevant period, inclusive of all forms of non-excludable remuneration. The lawful regular rate must factor in commissions, bonuses, and all other forms of compensation. Based on Defendants’ noncompliance with the regular rate of pay requirements applicable to overtime and meal/rest premiums, Plaintiff alleges on information and belief that the regular rate miscalculation equally applied to paid sick leave with respect to the aggrieved employees, resulting in underpayments in those pay periods.

36. Furthermore, when Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of compensation” because the premiums paid did not factor all forms of remuneration into the meal period premium rate. This policy and practice applied equally to other class members with respect to meal and/or rest period premiums paid under Labor Code § 226.7.

37. The foregoing violations result in additional liability for civil penalties relating to untimely payment of wages, waiting time penalties, and wage statement penalties.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **Violation of Labor Code §§ 510 and 1194**

4 **(Plaintiff Lally in her individual and representative capacities**

5 **against Defendants and DOES 1-20)**

6 38. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

7 39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
8 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
9 wages all overtime hours worked, and which further provide a private right of action for an employer's
10 failure to pay all overtime compensation for overtime hours worked.

11 40. Defendants failed in their affirmative obligation to pay Plaintiffs and Class Members
12 no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
13 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
14 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
15 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
16 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
17 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

18 41. Plaintiffs and Class Members are entitled to recover the full amount of the unpaid
19 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
20 extent permitted by law.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL MINIMUM WAGES**

23 **Violation of Labor Code §§ 1194, 1194.2, 1197, 1198, 558.1 and IWC W.O. 5-2001 § 4**

24 **(Plaintiff Lally in her individual and representative capacities**

25 **against Defendants and DOES 1-20)**

26 42. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 43. At all relevant times, California Labor Code sections 1194, 1197, and 1198 provide
28 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees,

1 and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is
2 defined in Wage Order No. 5 as “the time during which an employee is subject to the control of an
3 employer and includes all the time the employee is suffered or permitted to work, whether or not
4 required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K). As alleged above, Plaintiff and class
5 members were non-exempt employees entitled to minimum wage, among other protections.

6 44. As set forth above, Defendants denied Plaintiff and class members payment of the
7 minimum wage as required by law in that it did not pay any compensation for hours worked including
8 her meal period.

9 45. Defendants’ failure to pay Plaintiff and class members the minimum wage violates
10 California Labor Code sections 558.1, 1194 and 1197.

11 46. Pursuant to California Labor Code section 1194, Plaintiff and class members are
12 entitled to recover and hereby demands the unpaid balance of the full amount owed to her plus interest
13 thereon, reasonable attorneys’ fees and costs of suit.

14 47. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover and
15 hereby demands liquidated damages in an amount equal to the unpaid wages and interest thereon.

16 **THIRD CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS**

18 **Violation of Labor Code §§ 226.7 and 512**

19 **(By Plaintiff Lally in her individual and representative capacities**

20 **against Defendants and DOES 1-20)**

21 48. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 49. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
23 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
24 meal period premiums in lieu thereof), and which further provide a private right of action for an
25 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
26 regular rate of compensation.

27 50. Defendants willfully failed in their affirmative obligation to consistently provide
28 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning

1 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
2 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
3 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods”
4 sections of the applicable orders).

5 51. Further, Defendants willfully failed in their affirmative obligation to consistently pay
6 Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation
7 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
8 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
9 applicable orders).

10 52. Plaintiff and Class Members are entitled to recover the full amount of the meal period
11 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to
12 the extent permitted by law.

13 **FOURTH CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

15 **Violation of Labor Code §§ 226.7**

16 **(By Plaintiff Lally in her individual and representative capacities**

17 **against Defendants and DOES 1-20)**

18 53. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

19 54. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
20 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
21 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
22 employer’s failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
23 regular rate of compensation.

24 55. Defendants willfully failed in their affirmative obligation to consistently authorize and
25 permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than ten
26 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
27 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
28 applicable orders).

56. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

**(By Plaintiff Lally in her individual and representative capacities
against Defendants and DOES 1-20)**

57. All outside paragraphs of this Complaint are incorporated into this section.

58. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

59. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

1 (3) Paid sick time for exempt employees shall be calculated in the same manner
2 as the employer calculates wages for other forms of paid leave time.

3 60. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave
4 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
5 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave Class.

6 61. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
7 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
8 Supplemental Sick Leave wages to the Paid Sick Leave Class at the correct rate in violation of Labor
9 Code sections 246, 248.1, 248.2, and 248 *et seq.*

10 62. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
11 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020, to
12 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
13 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021, through at least September
14 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
15 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022,
16 to September 30, 2022, and may be extended thereafter.

17 63. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
18 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
19 (2) state minimum wage, (3) local minimum wage.

20 64. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
21 paid sick leave according to the highest of the following four methods:

22 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
23 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
24 the employee actually works overtime in that workweek.

25 (II) Calculated by dividing the covered employee's total wages, not including
26 overtime premium pay, by the employee's total hours worked in the full pay periods
27 of the prior 90 days of employment.

28 (III) The state minimum wage.

1 (IV) The local minimum wage to which the covered employee is entitled.

2 65. Labor Code section 248.6 requires employers to pay supplemental sick leave using
3 either method (I) or (II), as identified above.

4 66. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
5 Leave in the manner described above because Defendants failed to include in their sick leave
6 calculation the additional remuneration received by the Paid Sick Leave Class.

7 67. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Paid
8 Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

9 **SIXTH CAUSE OF ACTION**

10 **UNTIMELY PAYMENT OF WAGES**

11 **Violation of Labor Code §§ 204, 210, 218**

12 **(By Plaintiff Lally in her individual and representative capacities**

13 **against Defendants and DOES 1-20)**

14 68. All outside paragraphs of this Complaint are incorporated into this section.

15 69. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
16 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
17 period, and which further provide a private right of action for an employer's failure to comply with
18 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
19 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

20 70. Defendants willfully failed in their affirmative obligation to timely pay all wages,
21 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice
22 during each calendar month on days designated in advance by the employer as regular paydays (for
23 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
24 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
25 "Minimum Wages" sections of the applicable orders). This was a result of the regular rate
26 underpayments alleged throughout this Complaint.

27 71. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,
28 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay

each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

(By Plaintiff Lally in her individual and representative capacities

against Defendants and DOES 1-20)

72. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

73. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

74. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9). Specifically, Defendants failed to accurately state gross and net wages earned in compliance with Labor Code § 226(a)(1) and (5) due to the regular rate under payments. Moreover, Defendants failed to accurately state the lawful hourly rate for premium pay, sick pay, and overtime, as a result of the regular rate underpayments, in violation of Labor Code § 226(a)(9).

75. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

76. As a result, Plaintiff and Class Members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in

1 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
2 Code section 226(e).

3 **EIGHTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

5 **Violation of Labor Code §§ 201 *et seq.***

6 **(By Plaintiff Lally in her individual and representative capacities**

7 **against Defendants and DOES 1-20)**

8 77. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 78. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
10 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
11 employment, and which further provide a private right of action to recover statutory waiting time
12 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
13 wages.

14 79. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
15 wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon
16 termination of employment or within 72 hours thereafter for employees who did not provide at least
17 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
18 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

19 80. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
20 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
21 by law.

22 **NINTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **Violation of Business and Professions Code §§ 17200 *et seq.***

25 **(By Plaintiff Lally in her individual and representative capacities**

26 **against Defendants and DOES 1-20)**

27 81. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
28

1 82. Defendants have engaged and continue to engage in unfair and/or unlawful business
2 practices in the State of California in violation of California Business and Professions Code § 17200
3 by committing the foregoing wage and hour violations alleged throughout this Complaint.

4 83. Defendants' dependence on these unfair and/or unlawful business practices deprived
5 Plaintiff and continue to deprive other class members of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
7 Defendants over competitors who have been and/or are currently employing workers in compliance
8 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
9 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

10 84. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
11 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
12 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
13 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

14 85. Plaintiff does not have an adequate remedy at law for past or future violations, to the
15 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
16 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
17 violations do not provide a private right of action.

18 86. Plaintiff and class members are entitled to injunctive relief against Defendants,
19 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
20 an ownership interest and to prevent future damage and the public interest under Business and
21 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
22 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
23 § 1021.5.

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1 **TENTH CAUSE OF ACTION**

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

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

4 **(By Plaintiff Lally in her individual capacity and representative capacity on behalf of the State**
5 **and the Aggrieved Employees Against All Defendants)**

6 87. Plaintiff Lally incorporates all outside paragraphs of this Complaint as if set forth
7 herein.

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

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

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

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

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

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

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

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

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

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

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

97. On or about September 14, 2023, Plaintiff Lally and Plaintiff Hornburg amended the PAGA notice.

98. A true and correct copy of the amended written PAGA notice, entitled “Amended Notice of Labor Code Violations” is attached hereto as Exhibit 2 and incorporated by reference as though fully set forth herein (the “PAGA notice”).

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

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

101. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate

the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

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

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

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

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;

- b. For appointment of Plaintiffs as the class representative;
- c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;
- d. For division of Class Members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiffs and Plaintiffs' counsel to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

Dated: March 4, 2024

CHACKEL LAW, PC


GEOFFREY C. CHACKEL
Attorney for Plaintiff

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
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ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

January 9, 2023

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

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

Pacifica Companies LLC
1775 Hancock Street Suite #200
San Diego, California 92110

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

Prospect Hospitality LP
1775 Hancock Street Suite #200
San Diego, California 92110

Dear LWDA Officer and Company Representatives:

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

**PACIFICA COMPANIES LLC;
PROSPECT HOSPITALITY LP**

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

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Bell and Valet Attendant from about March 2020 to July 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS –

Unpaid Overtime

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

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

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

When Plaintiff and other aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Plaintiff and other aggrieved employees referral bonuses and other forms of remuneration that Defendants failed to include in the overtime rate when employees worked overtime hours. Defendants paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour they worked during the period in which Plaintiff and the aggrieved employees earned commissions or bonuses, Defendants should have (but failed to) pay overtime “at a rate of no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from **05/16/2022** to **05/31/2022** below:

Charge Date	Description	CURRENT EARNINGS DETAIL			
		Rate	Hours/ Units	Amount	Hours Worked
05-31-2022	RESV INCENTIVE	400.0000	1.00	400.00	0.00
05-31-2022	OT PAY	23.2500	8.90	206.93	8.90
05-31-2022	MEAL BREAK PENA	15.5000	1.00	15.50	0.00
05-31-2022	REG PAY	15.5000	75.78	1174.59	75.78

Extract from Plaintiff’s Wage Statement for the Pay Period from 05/16/2022 to 05/31/2022

During this pay period, Plaintiff earned a “RESV INCENTIVE”, a bonus, of \$400.00 that was not factored in Plaintiff’s overtime rate, as the 8.90 overtime hours was instead paid at a rate of 1.5x Plaintiff’s base rate of \$15.50, rather than the 1.5x of his regular rate of pay. Defendants committed the same “regular rate of pay violation” against Plaintiff and other aggrieved employees as a matter of common payroll administration and company policy in a

manner susceptible to common proof. Additional forms of compensation, like bonuses and commissions, were required to be included in the regular rate of pay for Plaintiff but were not. This resulted in underpayments of wages of employees.

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

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

To the extent aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful regular rate of pay throughout the relevant period. The lawful regular rate must factor in commissions, bonuses, and all other forms of compensation. Based on Defendants’ noncompliance with the regular rate of pay

requirements applicable to overtime and meal/rest premiums, Plaintiff alleges on information and belief that the regular rate miscalculation equally applied to paid sick leave with respect to the aggrieved employees, resulting in underpayments.

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

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

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period

taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of compensation” because the premiums paid did not factor all forms of remuneration into the rate.

An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from **05/16/2022** to **05/31/2022**.

Charge Date	Description	CURRENT EARNINGS DETAIL			
		Rate	Hours/ Units	Amount	Hours Worked
05-31-2022	RESV INCENTIVE	400.0000	1.00	400.00	0.00
05-31-2022	OT PAY	23.2500	8.90	206.93	8.90
05-31-2022	MEAL BREAK PENA	15.5000	1.00	15.50	0.00
05-31-2022	REG PAY	15.5000	75.78	1174.59	75.78

Extract from Plaintiff’s Wage Statement for the Pay Period from 05/16/2022 to 05/31/2022

Plaintiff’s wage statement shows Plaintiff’s meal period penalty was paid at Plaintiff’s base hourly rate, instead of Plaintiff’s regular rate of pay, which would have factored in Plaintiff’s bonus. Indeed, Defendant’s maintained a policy and practice of not paying meal period premiums at the regular rate of compensation in accordance with California law.

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

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

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

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

conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

On information and belief, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take their rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation to aggrieved employees, which would have factored in bonuses and other forms of compensation. As discussed throughout this correspondence, Defendants had a non-compliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums. Based on this practice, Plaintiff alleges the rest period premiums were equally deficient with respect to payments made to the aggrieved employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Specifically, Defendants applied the inaccurate hourly rates on employee wage statements in those respective periods where there was a regular rate violation, as described above. The amounts (gross and net) and hourly rates stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

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

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

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

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

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

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

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

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

Sincerely,

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

Nicholas J. Ferraro

Cc Plaintiff Kody Hornburg

Frank Perez, In-House Counsel
fperez@pacificacompanies.com

EXHIBIT 2

Amended Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

September 14, 2023

AMENDED NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*
(LWDA-CM-928363-23 – Filed Jan. 9, 2023)

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

Pacifica Companies LLC
1775 Hancock Street Suite #200
San Diego, California 92110

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

Prospect Hospitality LP
1775 Hancock Street Suite #200
San Diego, California 92110

Dear LWDA Officer and Company Representatives:

This letter serves as further written notice under Labor Code section 2699.3 on behalf of The ESTATE OF **KODY HORNBURG and MINA LALLY** (“Plaintiffs”) and all other “aggrieved employees” of the following “Defendant(s)”:

**PACIFICA COMPANIES LLC;
PROSPECT HOSPITALITY LP**

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

This office serves as legal counsel for Plaintiffs. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiffs intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiffs requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiffs attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiffs’ counsel to protect the interests of Plaintiffs, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiffs during the PAGA Period, including Plaintiff Hornburg in the position of Bell and Valet Attendant from about March 2020 to July 2022 and Plaintiff Lally in the positions of bartender, host, server or busser from November 2016 through July 2022. During their employment Plaintiffs and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

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

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

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

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

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Due to Defendants’ policy and practice of subtracting at least 30 minutes from aggrieved employees’ shifts to reflect meal periods, even if these meal periods were deficient, Plaintiffs and aggrieved employees accumulated unpaid, off-the-clock work hours. Defendants did not pay Plaintiffs or aggrieved employees for hours the employees worked through their meal periods, resulting in unpaid wages. Further, Defendants’ failure to include these work hours caused Plaintiff Lally and other aggrieved employees to receive less than the minimum wage.

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

Unpaid Overtime

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

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

When Plaintiffs and other aggrieved employees worked overtime, Defendants failed to pay the overtime and failed to pay the overtime at the “regular rate of pay.” Defendants also paid Plaintiffs and other aggrieved employees referral bonuses and other forms of remuneration including service charges that Defendants failed to include in the overtime rate when employees worked overtime hours. Defendants paid overtime to Plaintiffs and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour they worked during the period in which Plaintiffs and the aggrieved employees earned commissions, service charges or bonuses, Defendants should have (but failed to) pay overtime “at a rate of no less than ***one and one-half times the regular rate of pay*** for an employee” and “***twice*** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

Defendants failed to pay Plaintiffs and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. An illustrative example of the regular rate of pay violation is found on Plaintiff Hornburg’s wage statement for the pay period from **05/16/2022** to **05/31/2022** below:

Charge Date	Description	CURRENT EARNINGS DETAIL			
		Rate	Hours/ Units	Amount	Hours Worked
05-31-2022	RESV INCENTIVE	400.0000	1.00	400.00	0.00
05-31-2022	OT PAY	23.2500	8.90	206.93	8.90
05-31-2022	MEAL BREAK PENA	15.5000	1.00	15.50	0.00
05-31-2022	REG PAY	15.5000	75.78	1174.59	75.78

Extract from Plaintiff Hornburg’s Wage Statement for the Pay Period from 05/16/2022 to 05/31/2022

During this pay period, Plaintiff Hornburg earned a “RESV INCENTIVE”, a bonus, of \$400.00 that was not factored in Plaintiff’s overtime rate, as the 8.90 overtime hours was instead paid at a rate of 1.5x Plaintiff’s base rate of \$15.50, rather than the 1.5x of his regular rate of pay. Defendants committed the same “regular rate of pay violation” against Plaintiffs and other aggrieved employees as a matter of common payroll administration and company

policy in a manner susceptible to common proof. Additional forms of compensation, like bonuses, service charges and commissions, were required to be included in the regular rate of pay for Plaintiff but were not. This resulted in wage underpayment.

Finally, to the extent Defendants' meal period deduction policy above resulted in overtime hours off-the-clock, Plaintiffs believe and allege Defendants likewise underpaid overtime on shifts where the employees worked through their meal period.

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

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

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

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

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

To the extent aggrieved employees earned paid sick leave, Defendants violated Labor Code section 246(l) because sick leave was not paid at the lawful regular rate of pay throughout the relevant period. The lawful regular rate must factor in commissions, bonuses, and all other forms of compensation. Based on Defendants' noncompliance with the regular rate of pay requirements applicable to overtime and meal/rest premiums, Plaintiffs allege on information and belief that the regular rate miscalculation equally applied to paid sick leave with respect to the aggrieved employees, resulting in underpayments.

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

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

Failure To Provide Meal Periods And
Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

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

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

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

Defendants routinely impeded or prohibited Plaintiffs from taking a meal period each workday as Defendants failed to relieve them of all job duties and failed to relinquish control over their activities due to numerous factors including staffing shortages, a lack of trained personnel scheduled or made available by Defendants to assume their duties during a meal period, and work demands placed on them by supervisors to the extent they could not take a meal period. Also, when Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiffs and other aggrieved employees a meal period premium at the “regular rate of compensation” because the premiums paid did not factor all forms of remuneration into the rate. Furthermore, Defendants required Plaintiffs to work “off-the-clock” by retroactively altering aggrieved employees’ timesheets to show compliant meal periods, even if aggrieved worked through their meal periods that day.

An illustrative example of the regular rate of pay violation is found on Plaintiff’s wage statement for the pay period from **05/16/2022** to **05/31/2022**.

Charge Date	Description	CURRENT EARNINGS DETAIL			
		Rate	Hours/ Units	Amount	Hours Worked
05-31-2022	RESV INCENTIVE	400.0000	1.00	400.00	0.00
05-31-2022	OT PAY	23.2500	8.90	206.93	8.90
05-31-2022	MEAL BREAK PENA	15.5000	1.00	15.50	0.00
05-31-2022	REG PAY	15.5000	75.78	1174.59	75.78

Extract from Plaintiff Hornburg’s Wage Statement for the Pay Period from 05/16/2022 to 05/31/2022

Plaintiff’s wage statement shows Plaintiff’s meal period penalty was paid at Plaintiff’s base hourly rate, instead of Plaintiff’s regular rate of pay, which would have factored in Plaintiff’s bonus. Indeed, Defendant’s maintained a policy and practice of not paying meal period premiums at the regular rate of compensation in accordance with California law.

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

Failure To Provide Rest Periods And
Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

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

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

Defendants routinely impeded or prohibited Plaintiffs from taking rest periods each workday as Defendants failed to relieve them of all job duties and failed to relinquish control over their activities due to numerous factors including staffing shortages, a lack of trained personnel scheduled or made available by Defendants to assume their duties during a rest period, and work demands placed on them by supervisors to the extent they could not take a rest period. On information and belief, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take their rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the correct regular rate of compensation to aggrieved employees, which would have factored in bonuses and other forms of compensation. As discussed throughout this correspondence, Defendants had a non-compliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums. Based on this practice, Plaintiffs alleges the rest period premiums were equally deficient with respect to payments made to the aggrieved employees.

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

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

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

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

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

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

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

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

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

As discussed throughout this letter, Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to

timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

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

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

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

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

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(2), Defendants failed to accurately list the total hours worked and further violated Labor Code section 226(a)(8) by failing to accurately identify the name and address of the employer. In violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Specifically, Defendants applied the inaccurate hourly rates on employee wage statements in those respective periods where there was a regular rate violation, as described above. The amounts (gross and net) and hourly rates stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiffs and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow

confusion among Plaintiffs and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

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

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

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

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

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

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

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

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiffs and the aggrieved

employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

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

- CONCLUSION -

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

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

Sincerely,

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

Nicholas J. Ferraro

Cc Defense Counsel Robert Blumberg
rblumberg@littler.com

Defense Counsel Brooke Hammond
bhammond@littler.com

Co-Counsel Geoffrey Chackel, Chackel Law, PC
geoff@chackellaw.com

1 **Kody Hornburg v. Pacific Companies, LLC, et. al.**
2 Superior Court of San Diego—Central Division
3 LEAD CASE NO. 37-2023-00002433-CU-OE-CTL

4 **Consolidated for all purposes with: Mina Lally v. Pacifica Companies, LLC, et. al.**
5 Superior Court of San Diego – Central Division
6 CASE NO. 37-2023-00020893-CU-OE-CTL

7 **PROOF OF SERVICE**

8 I am a resident of the State of California, over the age of eighteen years, and not a party to
9 the within-entitled action. My business address is 501 West Broadway, Suite 1370, San Diego,
10 California 92101. On March 4, 2024, I served the within documents, with all exhibits (if any):

11 **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

12 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, in the United States mail at Bend, Oregon on this day and addressed
14 to parties listed below.

15 ☒ BY ELECTRONIC COURT FILING AND SERVICE: via One Legal Online
16 Court Services: I served upon the designated recipients via electronic transmission
17 through the One Legal system. Upon completion of said transmission of said
18 documents, a certified receipt is issued to the filing party acknowledging receipt of
19 One Legal's system. Once One Legal has served all designated recipients, proof of
20 electronic service is returned to the filing party

21 ☐ by transmitting via e-mail or electronic transmission the document(s) listed above
22 to the individual(s) below at the e-mail address(es) set forth below.

23 ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set
24 forth below on this date before 6:00 p.m. A copy of the transmission report issued
25 by the transmitting facsimile machine is attached hereto.

26 ☐ by placing the document(s) listed above in a sealed Federal Express envelope and
27 affixing a pre-paid air bill for standard overnight delivery to, and causing the
28 envelope to be delivered to an agent for delivery.

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8 I am readily familiar with the firm's practice of collection and processing correspondence
9 for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same
10 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
11 motion of the party served, service is presumed invalid if postal cancellation date or postage
12 meter date is more than one day after date of deposit for mailing in affidavit.

11 I declare under penalty of perjury under the laws of the State of California that the above
12 is true and correct. Executed on March 4, 2024, at San Diego, California.

13 
14 Geoffrey Chackel