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August 9, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Lance Cunningham v. The CitiScape Property Management Group, LLC, et al.*

Dear PAGA Administrator:

This office represents Lance Cunningham in connection with his claims under the California Labor Code. Mr. Cunningham was an employee of THE CITISCAPE PROPERTY MANAGEMENT GROUP, LLC; FOGCITI REAL ESTATE, INC.; and/or 1330 JONES STREET LLC. For the purpose of this letter, Mr. Cunningham collectively refers to these entities as CITISCAPE.

The employers may be contacted directly at the addresses below:

THE CITISCAPE PROPERTY
MANAGEMENT GROUP, LLC
3450 THIRD STREET SUITE 1-A
SAN FRANCISCO, CA 94124

FOGCITI REAL ESTATE, INC.
3450 THIRD STREET SUITE 1-A
SAN FRANCISCO, CA 94124

1330 JONES STREET LLC
3450 THIRD ST, STE 1-A
SAN FRANCISCO, CA 94124

Mr. Cunningham intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Cunningham seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CITISCAPE in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CITISCAPE employed Mr. Cunningham as a non-exempt employee from approximately November 2022 to April 2024. Mr. Cunningham worked for CITISCAPE as a Lobby Attendant and Rover at its location in San Francisco, California. During his employment, Mr. Cunningham typically worked eight (8) hours or more per day and five (5) days per week. By the end of his employment, Mr. Cunningham was compensated approximately \$24.15 per hour. Mr. Cunningham's job duties

included, without limitation, letting residents in and out of the building, distributing mail, accepting deliveries and taking deliveries up to the residents, securing the lobby area by monitoring security cameras, patrolling the property, and logging entries every hour to document issues or incidents.

CITISCAPE has committed each of the following Labor Code violations against Mr. Cunningham, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

CITISCAPE’s Company-Wide and Uniform Payroll and HR Practices

THE CITISCAPE PROPERTY MANAGEMENT GROUP, LLC and 1330 JONES STREET LLC are California limited liability companies while FOGCITI REAL ESTATE, INC. is a California corporation. Together, they operate a property management company offering professional management services for condominium and HOA communities in San Francisco and the greater Bay Area. Upon information and belief, CITISCAPE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Francisco, California, for all non-exempt, hourly paid employees working for CITISCAPE in California, including Mr. Cunningham and other aggrieved employees. At all relevant times, CITISCAPE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Cunningham and other aggrieved employees, regardless of their location or position.

Upon information and belief, CITISCAPE maintains a centralized Payroll department at its corporate headquarters in San Francisco, California, which processes payroll for all non-exempt, hourly paid employees working for CITISCAPE in California, including Mr. Cunningham and other aggrieved employees. Further, CITISCAPE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Cunningham and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CITISCAPE utilized the same methods and formulas when calculating wages due to Mr. Cunningham and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Cunningham’s experience and counsel’s review of those records currently available relating to Mr. Cunningham’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Cunningham reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

CITISCAPE willfully failed to pay all overtime wages owed to Mr. Cunningham and other aggrieved employees. During the relevant time period, Mr. Cunningham and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, CITISCAPE had, and continues to have, a company-wide policy and/or practice of requiring Mr. Cunningham and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts. For example, on a few occasions throughout his employment, CITISCAPE required Mr. Cunningham to communicate with CITISCAPE's management over the phone and outside of his scheduled shift times about work-related matters, which took 10 to 20 minutes each occurrence, time for which he was not paid. As a further example, on a few occasions throughout his employment, CITISCAPE required Mr. Cunningham and other aggrieved employees to participate in team calls to discuss work-related issues, changes to assigned duties, and updates to employment policies. These team calls took approximately 30 minutes, and Mr. Cunningham and other aggrieved employees were not paid for the time they spent on the phone. Thus, Mr. Cunningham and other aggrieved employees were subject to CITISCAPE's control outside of their shifts, time for which they were not paid.

Second, during the relevant time period, CITISCAPE had, and continues to have, company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads. CITISCAPE's policy and/or practice resulted in a failure to provide Mr. Cunningham and other aggrieved employees with adequate meal period coverage, and thus, Mr. Cunningham and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. This practice, coupled with a policy and/or practice of failing to schedule meal periods, further caused Mr. Cunningham and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Cunningham and other aggrieved employees worked through their meal periods or had them interrupted due to the heavy workload and lack of coverage.

Third, on information and belief, CITISCAPE had, and continues to have, a policy and/or practice of requiring that Mr. Cunningham and other aggrieved employees carry company-issued radios and respond to calls at all times. As a result, CITISCAPE's other employees contacted Mr. Cunningham and other aggrieved employees on the radios and/or on their personal mobile devices during unpaid meal periods to request assistance. CITISCAPE knew or should have known that Mr. Cunningham and other aggrieved employees were performing work while off-the-clock in order to meet CITISCAPE's expectations, but failed to compensate them for this time.

Fourth, on information and belief, CITISCAPE maintained a company-wide on-premises meal period policy, which mandated that Mr. Cunningham and other aggrieved employees remain on the work premises during their unpaid meal periods. Because Mr. Cunningham and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, CITISCAPE effectively maintained control over Mr. Cunningham and other aggrieved employees during their unpaid meal periods.

CITISCAPE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Cunningham and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform

work for which they were not paid. Because Mr. Cunningham and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Cunningham and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CITISCAPE did not pay Mr. Cunningham and/or other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, CITISCAPE paid Mr. Cunningham and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CITISCAPE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Cunningham and/or other aggrieved employees worked overtime and received these other forms of pay, CITISCAPE failed to pay all overtime wages by paying a lower overtime rate than required.

CITISCAPE's failure to pay Mr. Cunningham and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

First, as set forth above, CITISCAPE had a company-wide policy and/or practice requiring Mr. Cunningham and other aggrieved employees to perform work-related tasks while off-the-clock outside of their shifts, including communicating with CITISCAPE's management regarding work-related issues and participating in team calls. CITISCAPE failed to track this time Mr. Cunningham and other aggrieved employees spent working off-the-clock, and Mr. Cunningham and other aggrieved employees received no compensation for this time.

Second, as stated above, due to CITISCAPE's policies and/or practices of understaffing its locations while assigning heavy workloads, failing to schedule meal periods, requiring employees to respond to radio and/or phone communications, and requiring employees to stay on the work premises during meal periods, Mr. Cunningham and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Thus, CITISCAPE did not pay minimum wages for all hours worked by Mr. Cunningham and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime

premium payment, CITISCAPE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CITISCAPE regularly failed to pay at least minimum wages to Mr. Cunningham and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, CITISCAPE had, and continues to have, a company-wide policy and/or practice of understaffing, which, combined with the assignment of heavy workloads and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Cunningham and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Cunningham and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Cunningham sometimes took his meal periods late and/or had his meal periods interrupted due to assisting residents with issues or attending to building alarms.

Moreover, as stated, CITISCAPE had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Cunningham and other aggrieved employees respond to requests on company-issued radios and/or personal mobile devices, including during meal periods. As a result, CITISCAPE's other employees contacted Mr. Cunningham and other aggrieved employees on the radios and their personal cellular phones during meal periods to discuss work-related matters and request assistance.

Second, as stated, on information and belief, CITISCAPE maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Cunningham and other aggrieved employees remain on the work premises during the meal periods. Because Mr. Cunningham and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus,

CITISCAPE effectively maintained control over Mr. Cunningham and other aggrieved employees during meal periods.

Third, CITISCAPE did not provide Mr. Cunningham and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Cunningham worked shifts in excess of 10 hours in one day and never took a second meal period. Mr. Cunningham and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CITISCAPE knew or should have known that, as a result of these policies, Mr. Cunningham and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CITISCAPE further knew or should have known that CITISCAPE did not pay Mr. Cunningham and other aggrieved employees all meal period premiums when meal periods were late, missed, shortened, or interrupted.

Furthermore, CITISCAPE engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cunningham and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that CITISCAPE did pay Mr. Cunningham and/or other aggrieved employees for missed, late, interrupted, and shortened meal periods, CITISCAPE did not pay Mr. Cunningham and/or other aggrieved employees at the correct rate of pay for premiums because CITISCAPE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CITISCAPE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, CITISCAPE regularly failed to authorize and permit Mr. Cunningham and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. CITISCAPE maintained and implemented, on a company-wide basis, a non-compliant written rest period policy that prevented Mr. Cunningham and other aggrieved employees from taking compliant rest periods. CITISCAPE's non-compliant policy fails to correctly state the timing of when rest periods must occur. The policy states, in relevant part: "You are also permitted to take one paid 10-minute rest break for every four hours worked." However, under California law, an employee is entitled to rest periods for every four (4) hours worked or major fraction thereof. Thus, CITISCAPE's written rest period policy is non-compliant on its face, as it fails to authorize and permit employees to take a first rest period for shifts between 3.5 and 6 hours, a second rest period for shifts between 6 and 10 hours, a third rest period for shifts between 10 and 14 hours, and so on.

Moreover, as with meal periods, CITISCAPE's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Cunningham and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CITISCAPE failed to schedule rest periods, which, coupled with CITISCAPE's failure to provide adequate rest period coverage, further led to Mr. Cunningham and other aggrieved employees not being authorized and permitted to take rest periods. Also, as stated, CITISCAPE had, and continues to have, a policy and/or practice of requiring that Mr. Cunningham and other aggrieved employees carry company-issued radios to respond to calls on the radios and/or on their personal mobile devices from other employees at all times, including during rest periods.

Furthermore, on information and belief, CITISCAPE maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Cunningham and other aggrieved employees remain on the premises during their rest periods. Because Mr. Cunningham and other aggrieved employees were restricted from leaving CITISCAPE's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, CITISCAPE maintained control over Mr. Cunningham and other aggrieved employees during rest periods.

As a result of CITISCAPE's practices and policies, Mr. Cunningham and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Cunningham had to forgo his rest periods entirely due to the lack of coverage and heavy workload.

CITISCAPE has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Cunningham and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CITISCAPE did pay Mr. Cunningham and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CITISCAPE did not pay Mr. Cunningham and/or other aggrieved employees at the correct rate of pay for premiums because CITISCAPE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CITISCAPE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cunningham and other aggrieved employees are

entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CITISCAPE has not provided Mr. Cunningham and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CITISCAPE has knowingly and intentionally provided Mr. Cunningham and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CITISCAPE issued uniform wage statements to Mr. Cunningham and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, CITISCAPE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because CITISCAPE did not record the time Mr. Cunningham and other aggrieved employees spent working off the clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), CITISCAPE did not list the correct amount of gross wages and net wages earned by Mr. Cunningham and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, CITISCAPE failed to accurately list the total number of hours worked by Mr. Cunningham and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because CITISCAPE did not calculate Mr. Cunningham's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, CITISCAPE did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, CITISCAPE also failed to list the correct amount of net wages in violation of section 226(a)(5). CITISCAPE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to

list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CITISCAPE willfully failed to maintain accurate payroll records for Mr. Cunningham and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CITISCAPE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Cunningham and other aggrieved employees, in violation of section 1198. Furthermore, in light of CITISCAPE’s failure to provide Mr. Cunningham and other aggrieved employees with second 30-minute meal periods to which they were entitled, CITISCAPE kept no records of meal start and end times for second meal periods.

Because CITISCAPE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Cunningham and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Cunningham and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CITISCAPE failed to pay Mr. Cunningham and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

CITISCAPE willfully failed to pay Mr. Cunningham and other aggrieved employees who are no longer employed by CITISCAPE the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving CITISCAPE's employment.

Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 4-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

During the relevant time period, CITISCAPE, on a company-wide basis, required Mr. Cunningham and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Cunningham was required to use his personal cellular phone and mobile data to communicate with

CITISCAPE's management and coworkers about work-related matters and to participate in team calls. Moreover, Mr. Cunningham and other aggrieved employees were required to download mobile applications on their personal cellular phones such as the BuildingLink application, in order to clock in and out for their shifts when they were assigned certain positions such as the Rover position. Although CITISCAPE required Mr. Cunningham and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, CITISCAPE failed to reimburse them for their costs incurred.

Additionally, during the relevant time period, CITISCAPE, on a company-wide basis, required Mr. Cunningham and other aggrieved employees to report to work in uniforms bearing the company logo. However, CITISCAPE did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, CITISCAPE only provided Mr. Cunningham with one (1) shirt at the time of hire. Because CITISCAPE failed to provide employees with an adequate number of uniforms in relation to their scheduled shifts, Mr. Cunningham had to wash his uniforms more frequently than he otherwise would do laundry, and incurred expenses in doing so. Thus, CITISCAPE failed to maintain the uniforms they required Mr. Cunningham and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

CITISCAPE could have provided Mr. Cunningham and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and an adequate number of uniforms or access to laundering services. Or, CITISCAPE could have reimbursed employees for their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, CITISCAPE passed these operating costs off onto Mr. Cunningham and other aggrieved employees. At all relevant times, Mr. Cunningham did not earn at least two (2) times the minimum wage.

Thus, CITISCAPE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, CITISCAPE failed to provide Mr. Cunningham and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section

2810.5(a)(1)(A)-(C). Specifically, CITISCAPE failed to provide Mr. Cunningham and other aggrieved employees with the overtime rate(s) of pay in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that CITISCAPE provided to Mr. Cunningham is blank where the aforementioned wage information should be filled in. CITISCAPE's failure to provide Mr. Cunningham and other aggrieved employees with written notice of basic information regarding their employment with CITISCAPE is in violation of Labor Code section 2810.5.

Mr. Cunningham and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CITISCAPE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Cunningham's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Cunningham seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Cunningham, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CITISCAPE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Cunningham seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel".

Ninel Kocharyan

Copy: THE CITISCAPE PROPERTY MANAGEMENT GROUP, LLC (via U.S. Certified Mail);
FOGCITI REAL ESTATE, INC. (via U.S. Certified Mail); 1330 JONES STREET LLC (via U.S.
Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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MANAGEMENT GROUP, LLC
3450 THIRD STREET SUITE 1-A
SAN FRANCISCO, CA 94124

THE CITISCAPE PROPERTY
MANAGEMENT GROUP, LLC
3450 THIRD STREET SUITE 1-A
SAN FRANCISCO, CA 94124

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THE CITISCAPE PROPERTY
MANAGEMENT GROUP, LLC
3450 THIRD STREET SUITE 1-A
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A. Signature ☐ Agent
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Received by (Printed Name) C. Date of Delivery

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Restricted Delivery

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Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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SAN FRANCISCO, CA 94124

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SAN FRANCISCO, CA 94124



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2.

Transmit form separately (label)

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- A. Signature
☒ Agent
☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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- Service Type
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☐ Collect on Delivery Restricted Delivery
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Capstone Law, APC
1875 Century Park, East, 1000
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SAN FRANCISCO, CA 94124

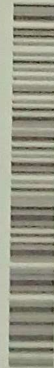
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

1330 JONES STREET LLC
3450 THIRD ST, STE 1-A
SAN FRANCISCO, CA 94124

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1330 JONES STREET LLC
3450 THIRD ST, STE 1-A
SAN FRANCISCO, CA 94124



2. *Address* 1330 JONES STREET LLC 3450 THIRD ST, STE 1-A SAN FRANCISCO, CA 94124

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PS Form 3811, July 2020 PSN 7530-02-000-9053

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A. Signature ☒ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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