

Jonathan M. Genish (State Bar No. 259031)
Miriam Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Telephone: (310) 622-4278/ Facsimile: (855) 786-6356

Attorneys for Plaintiff OWEN WILLIAMS,
individually, and on behalf of Aggrieved
Employees pursuant to the California
Private Attorneys General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

OWEN WILLIAMS, individually, and on behalf
of Aggrieved Employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

vs.

DHC PS HOLDINGS LLC; DAVIDSON
HOTEL COMPANY LLC dba DAVIDSON
HOSPITALITY GROUP; AGRE DCP PALM
SPRINGS TENANT LLC dba
MARGARITAVILLE RESORT PALM
SPRINGS; and DOES 1 through 25, inclusive,

Defendants.

Case No. **24CV100134**

**COMPLAINT FOR ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT, CAL.
LABOR CODE §§ 2698 ET SEQ.**

1 Plaintiff OWEN WILLIAMS (“Plaintiff”), individually, and on behalf of all similarly
2 aggrieved employees, alleges against Defendants DHC PS HOLDINGS LLC, DAVIDSON HOTEL
3 COMPANY LLC dba DAVIDSON HOSPITALITY GROUP, AGRE DCP PALM SPRINGS
4 TENANT LLC dba MARGARITAVILLE RESORT PALM SPRINGS, and DOES 1 through 25
5 (collectively, “Defendants”) as follows:

6 **INTRODUCTION**

7 1. This is an enforcement action under the California Labor Code Private Attorneys
8 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
9 on behalf of Plaintiff, the State of California, and all individuals who worked for Defendants in the
10 State of California as hourly-paid and/or non-exempt employees at any time from one year prior to
11 Plaintiff’s submission of written notice of Defendants’ alleged violations of the California Labor Code
12 to the Labor & Workforce Development Agency (“LWDA”) through final judgment (“Aggrieved
13 Employees”).

14 2. Plaintiff alleges that Defendants hired Plaintiff and Aggrieved Employees but failed to
15 properly pay them all wages owed for all time worked (including minimum wages, straight time
16 wages, and overtime wages), failed to provide them with all meal periods and rest periods and
17 associated premium wages to which they were entitled, failed to timely pay them all wages due during
18 their employment, failed to provide proper sick leave, failed to timely pay them all wages due upon
19 termination of their employment, failed to provide them with accurate itemized wage statements, failed
20 to maintain accurate payroll records, failed to reimburse them for necessary business expenses, failed
21 to provide one day’s rest in seven, and made unlawful inquiries into salary history.

22 3. As a result, Defendants violated, *inter alia*, California Labor Code sections 201, 202,
23 203, 204, 226(a), 226.7, 245-249, 432.3, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198,
24 2800, and 2802, and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Defendants’
25 conduct giving rise to these violations was malicious, fraudulent, and/or oppressive within the meaning
26 of PAGA. Through this action, Plaintiff seeks to recover all available remedies under PAGA including
27 but not limited to civil penalties and attorneys’ fees and costs.

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JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

5. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally availed themselves of the California market to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

6. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Alameda, including at 1800 Powell St, Emeryville, CA 94608.

THE PARTIES

7. At all times mentioned herein, Plaintiff OWEN WILLIAMS was and is a resident of the State of California.

8. At all times herein mentioned, Defendants DHC PS HOLDINGS LLC, DAVIDSON HOTEL COMPANY LLC dba DAVIDSON HOSPITALITY GROUP, and AGRE DCP PALM SPRINGS TENANT LLC dba MARGARITAVILLE RESORT PALM SPRINGS were and are employers who do business in California, with locations throughout the State of California, and whose employees are engaged throughout Alameda County and the State of California, including at 1800 Powell St, Emeryville, CA 94608.

9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to defendants DHC PS HOLDINGS LLC, DAVIDSON HOTEL COMPANY LLC dba DAVIDSON HOSPITALITY GROUP, AGRE

1 DCP PALM SPRINGS TENANT LLC dba MARGARITAVILLE RESORT PALM SPRINGS,
2 and/or DOES 1 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or
3 working in concert with, each of the other co-Defendants and within the course and scope of such
4 agency, employment, joint venture, or concerted activity with legal authority to act on the others'
5 behalf. The acts of any and all Defendants represent and were in accordance with Defendants' official
6 policy.

7 11. At all relevant times, Defendants were the employers of Plaintiff within the meaning
8 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
9 working conditions, wages, working hours, and conditions of employment of Plaintiff to make each
10 of said Defendants employers and employers liable under the statutory provisions set forth herein.

11 12. Defendants had the authority to hire and terminate Plaintiff and the Aggrieved
12 Employees, to set work rules and conditions governing their employment, and to supervise their
13 daily employment activities.

14 13. Defendants exercised sufficient authority over the terms and conditions of Plaintiff
15 and the Aggrieved Employees' employment for them to be their joint employers.

16 14. Defendants directly hired and paid wages and benefits to Plaintiff and the Aggrieved
17 Employees.

18 15. Defendants continue to employ hourly paid and/or non-exempt employees within the
19 State of California.

20 16. At all relevant times, Defendants, and each of them, ratified the acts and omissions
21 complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts
22 and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

23 17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
24 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
25 occurrences, and transactions alleged herein.

26 **GENERAL ALLEGATIONS**

27 18. Plaintiff OWEN WILLIAMS has worked for Defendants since approximately October
28 2018 to the present as a Sous Chef. Defendants jointly and severally employ OWEN WILLIAMS.

OWEN WILLIAMS performs various duties for Defendants including, among other things, event planning and preparation.

19. Defendants hired Plaintiff and the Aggrieved Employees but failed to properly pay them all overtime wages and minimum wages for all hours worked, failed to provide all meal and rest breaks to which they were entitled, failed to timely pay all wages upon termination of employment, failed to provide accurate wage statements, failed to provide proper sick leave, failed to keep accurate employment records, failed to reimburse necessary business-related expenses, failed to provide one day's rest in seven, made unlawful inquiries into salary history, and failed to adhere to other related protections afforded by the California Labor Code and applicable IWC Wage Order.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled to the protections afforded by the California Labor Code and the applicable IWC Wage Order, yet as set forth in detail below, engaged in a systematic pattern and practice of violating the California Labor Code and the applicable IWC Wage Order.

PAGA ALLEGATIONS

21. PAGA is and was applicable to Defendants' employment of Plaintiff and Aggrieved Employees.

22. PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves and other current or former employees pursuant to the procedures outlined in California Labor Code section 2699.3.

23. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person employed by the alleged violator and who suffered the violations alleged.

24. Plaintiff and the other hourly-paid, non-exempt employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c).

25. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements

1 have been met:

2 (a) The aggrieved employee shall give written notice by certified mail (hereinafter
3 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the
4 California Labor Code alleged to have been violated, including the facts and theories to
5 support the alleged violations.

6 (b) The LWDA shall provide notice (“LWDA Response”) to the employer and the aggrieved
7 employee by certified mail that it does not intend to investigate the alleged violation within
8 sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of
9 the LWDA Response, or if the LWDA Response is not provided within sixty-five (65)
10 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee
11 may commence a civil action pursuant to California Labor Code section 2699 to recover
12 civil penalties in addition to any other penalties to which the employee may be entitled.

13 26. On September 11, 2024, Plaintiff provided notice by electronic submission to the
14 LWDA and by certified mail to Defendants regarding the specific provisions of the California Labor
15 Code alleged to have been violated, including the facts and theories to support the alleged violations,
16 pursuant to California Labor Code section 2699.3. **A true and correct copy of the Employee’s Notice**
17 **is attached hereto as Exhibit A.**

18 27. Plaintiff did not receive a LWDA Response within sixty-five (65) calendar days of
19 providing the Employee’s Notice.

20 28. Therefore, the administrative prerequisites under California Labor Code section
21 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of,
22 *inter alia*, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 245-249, 432.3, 510,
23 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 have been satisfied.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2699, *ET SEQ.***

26 **(Against All Defendants)**

27 29. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in all preceding paragraphs.

1 30. Plaintiff brings this action on an individual basis and on a representative basis on behalf
2 of other Aggrieved Employees and the State of California, in Plaintiff’s capacity as a private attorney
3 general pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

4 31. PAGA expressly provides for a private right of action to recover civil penalties for
5 violations of the California Labor Code as follows: “*Notwithstanding any other provision of law, any*
6 *provision of this code that provides for a civil penalty to be assessed and collected by the Labor and*
7 *Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,*
8 *or employees, for a violation of this code, may, as an alternative, be recovered through a civil action*
9 *brought by an aggrieved employee on behalf of himself or herself and other current or former*
10 *employees against whom a violation of the same code provision was committed pursuant to the*
11 *procedures specified in Section 2699.3.*” Cal. Lab. Code § 2699(a).

12 32. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
13 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
14 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

15 33. Plaintiff and the other hourly-paid, non-exempt employees are “aggrieved employees”
16 as defined by California Labor Code section 2699(c).

17 34. Defendants’ conduct, as alleged herein, violates numerous sections of the California
18 Labor Code, including, but not limited to, the following:

- 19 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay
20 overtime wages, as set forth more fully below;
- 21 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to
22 pay minimum wages, as set forth more fully below;
- 23 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
24 legally required meal periods, as set forth more fully below;
- 25 (d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
26 required meal period premiums, as set forth more fully below;
- 27 (e) Violation of California Labor Code section 226.7 for failure to provide legally
28 required rest periods, as set forth more fully below;

- (f) Violation of California Labor Code section 226.7 for failure to pay required rest period premiums, as set forth more fully below;
- (g) Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiff and Aggrieved Employees during employment, as set forth more fully below;
- (h) Violation of California Labor Code sections 245 – 249 for failure to provide proper sick leave, as set forth more fully below;
- (i) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;
- (j) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and Aggrieved Employees, as set forth more fully below;
- (k) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiff and Aggrieved Employees, as set forth more fully below;
- (l) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for necessary business-related expenses, as set forth more fully below;
- (m) Violation of California Labor Code sections 551 and 552 for failure to provide one day’s rest in seven, as set forth more fully below; and
- (n) Violation of California Labor Code section 432.3 for unlawful inquiries into salary history, as set forth more fully below.

35. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections set forth herein, including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 245-249 (including 248.5), 1174.5, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and

1 remedies as provided by the California Labor Code and/or other statutes.

2 36. Pursuant to California Labor Code section 2699(m), civil penalties recovered by the
3 Aggrieved Employees shall be distributed as follows: seventy-five percent (65%) to the LWDA for
4 the enforcement of labor laws and education of employers and employees about their rights and
5 responsibilities and twenty-five (35%) to the Aggrieved Employees.

6 37. Plaintiff retained counsel to file this court action, and to assess and collect the civil
7 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and
8 costs pursuant to California Labor Code sections 210, 218.5, and 2699(g)(1), and any other applicable
9 statute.

10 **Failure to Pay Minimum Wages**

11 38. California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage
12 for employees fixed by the IWC Wage Order is the minimum wage to be paid to employees, and the
13 payment of a wage less than the minimum so fixed is unlawful.

14 39. The applicable IWC Wage Order sets the minimum wage for Plaintiff and the
15 Aggrieved Employees.

16 40. Defendants failed to pay minimum wages to Plaintiff and the Aggrieved Employees for
17 a wide range of off-the-clock work performed prior to clocking-in and/or after clocking-out for their
18 shifts.

19 41. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
20 and the Aggrieved Employees for all hours they worked in violation of California Labor Code sections
21 1194, 1197, and 1197.1. Defendants' conduct giving rise to these violations was malicious, fraudulent,
22 and/or oppressive within the meaning of PAGA.

23 **Failure to Pay Proper Overtime Wages**

24 42. California Labor Code section 510 and the applicable IWC Wage Order require
25 Defendants to pay Plaintiff and Aggrieved Employees who worked more than eight (8) hours in a day,
26 more than forty (40) hours in a workweek, and/or seven (7) consecutive days, at the rate of one-and-
27 a-half times their regular rate for all such hours worked.

28 43. California Labor Code section 510 and the applicable IWC Wage Order further requires

1 Defendants to pay Plaintiff and Aggrieved Employees who worked more than twelve (12) hours in a
2 day or more than eight (8) hours on the seventh consecutive day, overtime compensation at a rate of
3 two (2) times their regular rate of pay for all such hours worked.

4 44. During the relevant time period, Plaintiff and Aggrieved Employees regularly worked
5 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of forty (40)
6 hours in a workweek, and/or for seven (7) or more consecutive days, but Defendants routinely failed
7 to properly account for all such overtime hours and further failed to compensate Plaintiff and
8 Aggrieved Employees at the correct overtime rates.

9 45. Defendants' failure to pay correct overtime wages included, *inter alia*: (a) when the
10 combined total of the off-the-clock work discussed *supra* and the on-the-clock work exceed the
11 number of hours that trigger the payment of overtime wages under California Labor Code sections
12 510 and/or the applicable IWC Wage Order; (b) when Defendants intentionally, willfully, and/or
13 negligently mischaracterized overtime as straight time or double time as time-and-a-half; (c) when
14 Defendants assigned more work than could reasonably be completed in a workday or workweek to
15 Plaintiff and Aggrieved Employees, but refused to authorize the overtime necessary for them to
16 complete the assigned work; and (d) when Defendants failed to include all required wages and
17 renumeration when calculating the overtime rate.

18 46. Defendants' failure to pay Plaintiff and Aggrieved Employees proper overtime
19 compensation, as required by California law, violates the provisions of California Labor Code section
20 510, and is therefore unlawful. Defendants' conduct giving rise to these violations was malicious,
21 fraudulent, and/or oppressive within the meaning of PAGA.

22 **Failure to Provide Meal Periods**

23 47. California Labor Code section 226.7 provides that no employer shall require an
24 employee to work during any meal period mandated by an applicable IWC Order.

25 48. California Labor Code section 512(a) provides that an employer may not require, cause,
26 or permit an employee to work for a period of more than five (5) hours per day without providing the
27 employee with a meal period of not less than thirty (30) minutes, except that if the total work period
28 per day of the employee is not more than six (6) hours, the meal period may be waived by mutual

1 consent of both the employer and the employee.

2 49. California Labor Code section 512(a) further provides that an employer may not
3 employ an employee for a work period of more than ten (10) hours per day without providing the
4 employee with a second meal period of not less than thirty (30) minutes, except that if the total hours
5 worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent
6 of the employer and the employee only if the first meal period was not waived.

7 50. The applicable IWC Wage Order sets forth the same requirements for meal breaks.

8 51. Plaintiff and Aggrieved Employees who were scheduled to work for no longer than six
9 (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were required
10 to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

11 52. Plaintiff and the Aggrieved Employees who were scheduled to work for more than six
12 (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal
13 period of not less than thirty (30) minutes.

14 53. Plaintiff and the Aggrieved Employees, who were scheduled to work for more than ten
15 (10) hours but no longer than twelve (12) hours, and who did not waive their legally mandated meal
16 periods by mutual consent, were required to work in excess of ten (10) hours without receiving a
17 second uninterrupted meal period of not less than thirty (30) minutes.

18 54. Plaintiff and the Aggrieved Employees, who were scheduled to work for more than
19 twelve (12) hours, were required to work for periods longer than ten (10) hours without a second
20 uninterrupted meal period of not less than thirty (30) minutes.

21 55. Moreover, when meal breaks were provided, they were often interrupted, cut short,
22 and/or Plaintiff and the Aggrieved Employees were not relieved of all duties as required by law.

23 56. Such conduct violates California Labor Code sections 226.7 and 512(a) and the
24 applicable IWC Wage Order. Defendants' conduct giving rise to these violations was malicious,
25 fraudulent, and/or oppressive within the meaning of PAGA.

26 **Failure to Pay Compliant Meal Break Premiums**

27 57. California Labor Code section 226.7 provides: "[i]f an employer fails to provide an
28 employee a [meal] period in accordance with a state law, including, but not limited to, an applicable

1 statute or applicable regulation, standard, or order of the Industrial Welfare Commission... the
2 employer shall pay the employee one additional hour of pay at the employee's regular rate of
3 compensation for each workday that the [meal] period is not provided."

4 58. The applicable IWC Wage Order provides: "[i]f an employer fails to provide an
5 employee a meal period in accordance with the applicable provisions of this Order, the employer shall
6 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday
7 that the meal period is not provided."

8 59. Defendants failed to pay Plaintiff and Aggrieved Employees meal period premiums
9 due in violation of California Labor Code sections 226.7 and 512 on each day when a complete, timely,
10 and uninterrupted meal period of at least thirty (30) minutes was not provided.

11 60. Moreover, if and when meal break premiums were provided, Defendants failed to
12 incorporate all nondiscretionary payments for work performed by Plaintiff and the Aggrieved
13 Employees in the regular rate of compensation for purposes of such premiums.

14 61. Defendants' conduct violates the applicable IWC Wage Order and California Labor
15 Code section 226.7. Defendants' conduct giving rise to these violations was malicious, fraudulent,
16 and/or oppressive within the meaning of PAGA.

17 **Failure to Provide Rest Periods**

18 62. California Labor Code section 226.7 provides that no employer shall require an
19 employee to work during any rest period mandated by an applicable IWC Wage Order.

20 63. The applicable IWC Wage Order provides that "[e]very employer shall authorize and
21 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
22 work period" and that the "rest period time shall be based on the total hours worked daily at the rate
23 of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily
24 work time is less than three and one-half (3½) hours.

25 64. Defendants required Plaintiff and the Aggrieved Employees to work four (4) or more
26 hours without authorizing or permitting a timely ten (10) minute uninterrupted rest period during
27 which time they were relieved of their duties per each four (4) hour period, or major fraction thereof
28 worked.

1 65. Defendants' conduct therefore violates the applicable IWC Wage Order and California
2 Labor Code section 226.7. Defendants' conduct giving rise to these violations was malicious,
3 fraudulent, and/or oppressive within the meaning of PAGA.

4 **Failure to Pay Rest Break Premiums**

5 66. California Labor Code section 226.7 provides: "[i]f an employer fails to provide an
6 employee a [rest] period in accordance with a state law, including, but not limited to, an applicable
7 statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the employer
8 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
9 each workday that the [rest] period is not provided."

10 67. The applicable IWC Wage Order provides: "[i]f an employer fails to provide an
11 employee a rest period in accordance with the applicable provisions of this Order, the employer shall
12 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday
13 that the rest period is not provided."

14 68. Defendants failed to pay Plaintiff and Aggrieved Employees required rest break
15 premiums due when compliant rest periods were not provided.

16 69. Moreover, if and when rest break premiums were provided, Defendants failed to
17 incorporate all nondiscretionary payments for work performed by Plaintiff and the Aggrieved
18 Employees in the regular rate of compensation for purposes of such premiums.

19 70. Defendants' conduct violates the applicable IWC Wage Order and California Labor
20 Code section 226.7. Defendants' conduct giving rise to these violations was malicious, fraudulent,
21 and/or oppressive within the meaning of PAGA.

22 **Failure to Timely Pay Wages During Employment**

23 71. California Labor Code section 204 provides that all wages earned by any person in any
24 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
25 due upon termination of an employee, are due and payable between the 16th and the 26th day of the
26 month during which the labor was performed. It further provides all wages earned by any person in
27 any employment between the 16th and the last day, inclusive, of any calendar month, other than those
28 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of

1 the following month.

2 72. California Labor Code section 204 provides that all wages earned for labor in excess
3 of the normal work period shall be paid no later than the payday for the next regular payroll period.

4 73. During the relevant time period, Defendants intentionally and willfully failed to pay
5 Plaintiff and the Aggrieved Employees all wages due to them, within any time period permissible
6 under California Labor Code section 204, including wages for overtime compensation, minimum wage
7 compensation, meal period premiums, and rest period premiums.

8 74. Such conduct violates California Labor Code section 204. Defendants' conduct giving
9 rise to these violations was malicious, fraudulent, and/or oppressive within the meaning of PAGA.

10 **Failure to Timely Pay Wages Upon Termination**

11 75. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
12 to timely pay all earned and unpaid wages to an employee who is discharged.

13 76. California Labor Code section 201 mandates that if an employer discharges an
14 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
15 immediately.

16 77. California Labor Code section 202 mandates that if an employee quits, his or her wages
17 shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee
18 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee
19 is entitled to his or her wages at the time of quitting.

20 78. California Labor Code section 203 provides that if an employer willfully fails to pay,
21 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
22 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
23 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
24 continue for more than thirty (30) days.

25 79. At the time that Plaintiff and Aggrieved Employees' employment with Defendants
26 ended, Defendants knowingly and willfully failed to pay Plaintiff and the Aggrieved Employees all
27 wages owed to them pursuant to California Labor Code sections 201 and 202, including, without
28 limitation, overtime wages, minimum wages, and meal and rest period premium wages.

1 80. Such conduct violates California Labor Code sections 201, 202, and 203. Defendants'
2 conduct giving rise to these violations was malicious, fraudulent, and/or oppressive within the meaning
3 of PAGA.

4 **Violations Regarding California Sick Leave/Sick Pay Laws**

5 81. California Labor Code sections 245 – 249 provide various protections regarding sick
6 leave for California employees, including accrual of sick leave, notice that California employers must
7 provide to their employees regarding sick leave, etc. Among those, California Labor Code section
8 246(i) requires an employer to provide written notice about available sick leave, and states in relevant
9 part:

10 “An employer shall provide an employee with written notice that sets forth the amount of paid
11 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use
on either the employee’s itemized wage statement described in Section 226 or in a separate
writing provided on the designated pay date with the employee’s payment of wages.”

12 82. California Labor Code section 246.5 further provides requirements for employer
13 provision of paid sick days for various purposes and sets out various rights of California employees
14 regarding use of sick time/sick pay.

15 83. California Labor Code section 248.5, including section (e), provides mechanisms by
16 which an employer may be held liable for violations of sick leave laws within the California Labor
17 Code.

18 84. Defendants failed to provide proper accrued sick leave to Plaintiff and the Aggrieved
19 Employees and failed to provide proper notice about accrued sick leave.

20 85. Therefore, Defendants violated California Labor Code sections 245-249, among others.
21 Defendants’ conduct giving rise to these violations was malicious, fraudulent, and/or oppressive
22 within the meaning of PAGA.

23 **Failure to Provide One Day’s Rest In Seven**

24 86. California Labor Code section 551 states that “[e]very person employed in any
25 occupation of labor is entitled to one day’s rest therefrom in seven.” California Labor Code section
26 552 prohibits and employer from “caus[ing] his employees to work more than six days in seven.”

27 87. In *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal. 5th 1074, the Court addressed unsettled
28 questions relating to employees’ guaranteed day of rest under the California Labor Code, noting the

1 following:

2 Employees are entitled to one day of rest for each workweek (as defined by the
3 employer), rather than one rest day in every consecutive seven-day period. [*Mendoza*
4 *v. Nordstrom, Inc.*, *supra*, 2 Cal.5th at p.1078.] The California Labor Code refers to a
5 week or workweek as a “fixed and regularly recurring period.” This can be Sunday to
6 Saturday, or Monday to Sunday, not a rolling period of any seven consecutive
7 days. [*Id.* at p. 1084.] This means that an employee could essentially work more than
8 six consecutive days without a day of rest if the days of work stretch across more than
9 one workweek. This “week-by-week” interpretation can be best understood by
10 dividing the calendar month into seven-day blocks (such as Monday to Sunday). If an
11 employee takes a day of rest early in the workweek (Tuesday) and then another rest
12 day late in the next workweek (Sunday), that employee will essentially work eleven
13 consecutive days without a rest day. This is not per se prohibited under the law. [*Id.* at
14 p. 1080.] The court explained that for every calendar month, an employee is guaranteed
15 no less than one day of rest for every seven days worked. Therefore, rest days need not
16 fall on every seventh day, but can be spaced out differently in a calendar month, “so
17 long as the number of rest days received by the employee amounts to the number of
18 calendar days divided by seven.” [*Id.* at p. 1086.]

11 Employees who work six-hour shifts or less on every day of the given workweek are
12 not entitled to a rest day. [*Mendoza v. Nordstrom, Inc.*, *supra*, 2 Cal.5th at p. 1078.]
13 However, this applies only if the employee never works a shift of more than six hours
14 in any day of the given week. Also, the day of rest guarantee does not apply “when the
15 total hours of employment do not exceed 30 hours in any week.” [*Id.* at p. 1084.]

14 Finally, an employer “causes” an employee to go without a day of rest “when it induces
15 the employee to forgo rest to which he or she is entitled.” [*Mendoza v. Nordstrom,*
16 *Inc.*, *supra*, 2 Cal.5th at p. 1078.] An employee can, however, independently choose
17 not to take a day of rest and an employer is not prohibited from allowing or permitting
18 the employee to do so. [*Id.*] “An employer may not encourage its employees to forgo
19 rest or conceal the entitlement to rest, but is not liable simply because an employee
20 chooses to work a seventh day.” [*Id.* at p. 1091.]

18 88. Further, the California Code of Regulations, Title 8 (“Cal. Code Regs.”) provide for
19 the amounts at which employees should be paid when working on the seventh day in the manner
20 proscribed by Cal. Lab. Codes 551 and 552, and further clarified by *Mendoza*. For example, Cal.
21 Code Reg. section 11170 for miscellaneous employees section 4 provides:

22
23 Daily Overtime - General Provisions. The following overtime provisions are applicable
24 to employees eighteen (18) years of age or over and to employees 16 or 17 years of age
25 who are not required by law to attend school, and are not otherwise prohibited by law
26 from engaging in the subject work. Such employees shall not be employed more than
27 eight (8) hours in any workday or more than 40 hours in any workweek unless the
28 employee receives one and one-half (1 1/2) times such employee's regular rate of pay
for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
a day's work. Employment beyond eight (8) hours in any workday or more than six (6)
days in any workweek is permissible provided the employee is compensated for such
overtime at not less than:

(A) One and one-half (1 1/2) times the employee's regular rate of pay for all

hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(B) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(C) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

89. During the relevant time period, Plaintiff and other Aggrieved Employees were subjected to numerous work periods where they were not afforded one day's rest in seven, and, per the further guidance provided in from the *Mendoza* case, Plaintiff and other Aggrieved Employees were sometimes required to work two or more weeks straight without a single day off.

90. Therefore, Defendants failed to provide Plaintiff and other Aggrieved Employees the legally-mandated rest days as required by California law, and in violation of California Labor Code sections 551 and 552. Defendants' conduct giving rise to these violations was malicious, fraudulent, and/or oppressive within the meaning of PAGA

Failure to Provide Compliant Wage Statements

91. California Labor Code section 226(a) provides that every employer shall furnish each of its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

92. Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to state all correct rates of pay, all hours worked, all meal period premium wages earned, and all rest period premium wages earned.

1 93. Such conduct violates California Labor Code section 226. Defendants' conduct giving
2 rise to these violations was malicious, fraudulent, and/or oppressive within the meaning of PAGA.

3 **Failure to Keep Requisite Payroll Records**

4 94. California Labor Code section 1174(d) requires an employer to keep at a central
5 location in the state or at the plants or establishments at which employees are employed, payroll
6 records showing the hours worked daily by and the wages paid to, and the number of piece-rate units
7 earned by and any applicable piece rate paid to, employees employed at the respective plants or
8 establishments. These records shall be kept in accordance with rules established for this purpose by
9 the commission, but in any case, shall be kept on file for not less than three years.

10 95. Defendants intentionally and willfully failed to keep accurate and complete payroll
11 records showing the hours worked daily and the wages paid to Plaintiff and the Aggrieved Employees.

12 96. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff
13 and the Aggrieved Employees have suffered injury and damage to their statutorily protected rights.

14 97. More specifically, Plaintiff and the Aggrieved Employees have been injured by
15 Defendants' intentional and willful violation of California Labor Code section 1174(d) because they
16 were denied both their legal right and protected interest, in having available, accurate and complete
17 payroll records pursuant to California Labor Code section 1174(d). Defendants' conduct giving rise
18 to these violations was malicious, fraudulent, and/or oppressive within the meaning of PAGA.

19 **Failure to Reimburse Necessary Business Expenses**

20 98. Pursuant to California Labor Code sections 2800 and 2802, an employer must
21 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
22 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
23 consequence of his or her obedience to the directions of the employer.

24 99. Plaintiff and the Aggrieved Employees incurred necessary business-related expenses
25 and costs that were not fully reimbursed by Defendants.

26 100. Defendants intentionally and willfully failed to reimburse Plaintiff and the Aggrieved
27 Employees for all necessary business-related expenses and costs.

28 101. Such conduct violates California Labor Code sections 2802. Defendants' conduct

1 giving rise to these violations was malicious, fraudulent, and/or oppressive within the meaning of
2 PAGA.

3 **Unlawful Inquiries Into Salary History**

4 102. California Labor Code section 432.3 provides in part “(b) An employer shall not, orally
5 or in writing, personally or through an agent, seek salary history information, including compensation
6 and benefits, about an applicant for employment.”

7 103. Defendants required Plaintiff Claimant, Aggrieved Employees, and applicants to reveal
8 their salary history when applying for employment with Defendants on applications that requested,
9 among other things, the dates employed by previous employers, the employers’ names, and the salary
10 earned while working for those employers.

11 104. Defendants violated California Labor Code section 432.3. Defendants’ conduct giving
12 rise to these violations was malicious, fraudulent, and/or oppressive within the meaning of PAGA.

13 **PRAYER FOR RELIEF**

14 Plaintiff, individually, and on behalf of Aggrieved Employees pursuant to the California
15 Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally,
16 as follows:

17 1. For the imposition of civil penalties pursuant to California Labor Code sections 2699,
18 210, 558, 226, 226.3, 245-249 (including 248.5), 1174.5, and 1197.1 and all other penalties allowed
19 by the California Labor Code and/or other applicable statutes;

20 2. For injunctive relief;

21 3. For statutory attorneys’ fees and costs pursuant to sections 210, 218.5, and 2699(g)(1)
22 of the California Labor Code; and

23 ///

24 ///

25 ///

4. For such other and further relief as the Court may deem proper.

Dated: November 18, 2024

BLACKSTONE LAW, APC

By:

Jonathan M. Genish, Esq.

Miriam Schimmel, Esq.

Joana Fang, Esq.

Alexandra Rose, Esq.

Jared C. Osborne, Esq.

*Attorneys for Plaintiff Owen Williams,
individually, and on behalf of Aggrieved
Employees pursuant to the California
Private Attorneys General Act*

EXHIBIT A



8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

Miriam Schimmel, Esq.
mschimmel@blackstonepc.com

September 11, 2024

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Owen Williams v. DHC PS Holdings LLC; Davidson Hotel Company LLC dba Davidson Hospitality Group; AGRE DCP Palm Springs Tenant LLC dba Margaritaville Resort Palm Springs*

To Whom It May Concern:

This office represents Owen Williams (“Claimant”) with respect to their claims under the California Labor Code against DHC PS Holdings LLC, Davidson Hotel Company LLC dba Davidson Hospitality Group, and AGRE DCP Palm Springs Tenant LLC dba Margaritaville Resort Palm Springs (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers have employed Owen Williams since approximately October 2018 to the present as a non-exempt, hourly-paid employee. Owen Williams works as a Sous Chef for Employers and is based out of Employers’ facility located at 1600 N. Indian Canyon Dr. Palm Springs, CA 92262. Employers also maintain office and facilities at 1800 Powell St, Emeryville, CA 94608.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of themselves and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period who suffered the violations alleged (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California's wage and hour laws during Claimant's employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 245-249, 432.3, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order"). Employers' conduct giving rise to the violations detailed below was malicious, fraudulent, and/or oppressive within the meaning of PAGA.

The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee's regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee's regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimant and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimant and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees.

Employers also failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; injunctive relief; and attorneys' fees and costs.

2. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee's regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and

(7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a) and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; injunctive relief; and attorneys' fees and costs.

3. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train

Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; injunctive relief; and attorneys' fees and costs.

4. 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. During the relevant time period, Employers willfully and intentionally failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; injunctive relief; and attorneys' fees and costs.

5. VIOLATIONS REGARDING CALIFORNIA SICK LEAVE/SICK PAY LAWS

California Labor Code sections 245 – 249 provide various protections regarding sick leave for California employees, including accrual of sick leave, notice that California employers must provide to their employees regarding sick leave, etc. Among those, California Labor Code section

246(i) requires an employer to provide written notice about available sick leave, and states in relevant part:

“An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

California Labor Code section 246.5 further provides requirements for employer provision of paid sick days for various purposes and sets out various rights of California employees regarding use of sick time/sick pay.

California Labor Code section 248.5, including section (e), provides mechanisms by which an employer may be held liable for violations of sick leave laws within the California Labor Code.

Employer failed to provide proper accrued sick leave to Claimant and Aggrieved Employees and failed to provide proper notice about accrued sick leave. Therefore, Employers violated California Labor Code sections 245-249.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to the relevant California Labor Code section including section 248.5; all available equitable and injunctive relief; and attorneys’ fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Employers’ failure to provide accurate itemized wage statements was knowing and intentional. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; injunctive relief; and attorneys’ fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, 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. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; injunctive relief; and attorneys' fees and costs.

8. FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN

California Labor Code section 551 states that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." California Labor Code section 552 prohibits and employer from "caus[ing] his employees to work more than six days in seven." California Labor Code section 852 provides that "The employer shall apportion the periods of rest to be taken by an employee so that the employee will have one complete day of rest during each week."

In *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal. 5th 1074, the Court addressed unsettled questions relating to employees' guaranteed day of rest under the California Labor Code, noting the following:

1. Employees are entitled to one day of rest for each workweek (as defined by the employer), rather than one rest day in every consecutive seven-day period. [*Mendoza v. Nordstrom, Inc.*, supra, 2 Cal.5th at p.1078.] The California Labor Code refers to a week or workweek as a "fixed and regularly recurring period." This can be Sunday to Saturday, or Monday to Sunday, not a rolling period of any seven consecutive days. [Id. at p. 1084.] This means that an employee could essentially work more than six consecutive days without a day of rest if the days of work stretch across more than one workweek. This "week-by-week" interpretation can be best understood by dividing the calendar month into seven-day blocks (such as Monday to Sunday). If an employee takes a day of rest early in the workweek (Tuesday) and then another rest day late in the next workweek (Sunday), that employee will essentially work eleven consecutive days without a rest day. This is not per se prohibited under the law. [Id. at p. 1080.] The court explained that for every calendar month, an employee is guaranteed no less than one day of rest for every seven days worked. Therefore, rest days need not fall on every seventh day, but can be spaced out differently

in a calendar month, “so long as the number of rest days received by the employee amounts to the number of calendar days divided by seven.” [Id. at p. 1086.]

2. Employees who work six-hour shifts or less on every day of the given workweek are not entitled to a rest day. [*Mendoza v. Nordstrom, Inc.*, supra, 2 Cal.5th at p. 1078.] However, this applies only if the employee never works a shift of more than six hours in any day of the given week. Also, the day of rest guarantee does not apply “when the total hours of employment do not exceed 30 hours in any week.” [Id. at p. 1084.]

3. Finally, an employer “causes” an employee to go without a day of rest “when it induces the employee to forgo rest to which he or she is entitled.” [*Mendoza v. Nordstrom, Inc.*, supra, 2 Cal.5th at p. 1078.] An employee can, however, independently choose not to take a day of rest and an employer is not prohibited from allowing or permitting the employee to do so. [Id.] “An employer may not encourage its employees to forgo rest or conceal the entitlement to rest, but is not liable simply because an employee chooses to work a seventh day.” [Id. at p. 1091.]

Further, the California Code of Regulations, Title 8 (“Cal. Code Regs.”) provide for the amounts at which employees should be paid when working on the seventh day in the manner proscribed by Cal. Lab. Codes 551 and 552, and further clarified by *Mendoza*. For example, Cal. Code Reg. section 11170 for miscellaneous employees section 4 provides:

4. Daily Overtime - General Provisions

The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees 16 or 17 years of age who are not required by law to attend school, and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (A) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (B) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

- (C) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

During the relevant time period, Claimant and other Aggrieved Employees were subjected to numerous work periods where they were not afforded one day's rest in seven, and, per the further guidance provided in from the *Mendoza* case, Claimant and other Aggrieved Employees were sometimes required to work two or more weeks straight without a single day off. Therefore, Employers failed to provide Claimant and other Aggrieved Employees the legally-mandated rest days as required by California law, and in violation of California Labor Code sections 551 and, 552 and 852.

Based on these violations, Claimant will seek civil penalties under PAGA, Labor Code section 2698, et seq., on behalf of the LWDA, and injunctive relief against Employers if authorized to file a representative action on behalf of the State of California.

9. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers.

Accordingly, Employers violated the applicable IWC Order **Error! Reference source not found.**and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; injunctive relief; and attorneys' fees and costs.

10. UNLAWFUL INQUIRIES INTO SALARY HISTORY

California Labor Code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment."

Employers required Claimant, Aggrieved Employees, and applicants to reveal their salary history when applying for employment with Employers on applications that requested, among other things, the dates employed by previous employers, the employers' names, and the salary earned while working for those employers. Therefore, Employers violated California Labor Code section 432.3.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant California Labor Code section 2699 et seq, penalties pursuant to California Labor Code section 432.3, injunctive relief, and attorneys' fees and costs.

11. FAILURE TO TIMELY PAY ALL 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 if an employee quits 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' 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.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimant and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimant and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimant and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

12. CONCLUSION

Claimant hereby provides notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*, and specifically asks for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that Claimant may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code



8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

§ 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

DHC PS Holdings LLC One Ravinia Drive, Suite 1600 Atlanta, GA 30346	DHC PS Holdings LLC Agent for Service, 1505 Corporation C T Corporation System 330 N Brand Blvd Suite 700 Glendale, CA 91203
Davidson Hotel Company LLC One Ravinia Drive, Suite 1600 Atlanta, GA 30346	Davidson Hotel Company LLC Agent for Service, 1505 Corporation C T Corporation System 330 N Brand Blvd Suite 700 Glendale, CA 91203
AGRE DCP Palm Springs Tenant LLC 3021 Citrus Circle, Suite 130 Walnut Creek, CA 94598	AGRE DCP Palm Springs Tenant LLC Agent for Service, 1505 Corporation C T Corporation System 2710 Gateway Oaks Drive, Ste 150N Sacramento, CA 95833