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Carmen Chavez Fernandez, Yolanda Membreno de Ayala, and
9 Maria Rodriguez de Paz

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CRUZ**

12 JUANA MATIAS, CARMEN CHAVEZ
FERNANDEZ, YOLANDA MEMBRENO DE
13 AYALA, MARIA RODRIGUEZ DE PAZ,
HANNAH KNOERZER, HERIBERTO
14 CHAVEZ RODRIGUEZ, GRACIELA
LOPEZ, individually, and on behalf of other
15 members of the general public similarly situated,
and as aggrieved employees pursuant to the
16 Private Attorneys General Act ("PAGA"),

17 Plaintiffs,

18 vs.

19 HOSPITALITY STAFFING SOLUTIONS,
20 LLC, a Delaware limited liability company;
KELLERMEYER BERGENSONS
21 SERVICES, LLC, a Delaware limited liability
company; and DOES 1 through 10, inclusive,
22

23 Defendants.
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CASE NO.: 23CV00490

[Assigned for all purposes to Hon. Timothy Schmal
in Dept. 10]

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: May 5, 2026
Time: 8:30 a.m.
Place: Department 10

Complaint Filed: February 28, 2023
Trial Date: None Set

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1 minimum wages; (5) failure to pay overtime; (6) failure to provide meal breaks; (7) failure to provide rest
2 breaks; (8) failure to timely pay wages during employment; (9) failure to timely pay wages at separation;
3 (10) failure to furnish accurate itemized wage statements; and (11) unfair competition in violation of
4 California Business and Professions Code, Cal. Bus. & Prof. Code §§ 17200, et seq. (the “Knoerzer
5 Action”).

6 4. Based on information and belief: On January 10, 2023, Plaintiff Heriberto Chavez
7 Rodriguez (“Plaintiff Rodriguez”) filed a purported Class Action Complaint in Orange County Superior
8 Court, Case Nos. 30-2023-01300904-CU-OE-CXC, against HSS and Montage Laguna Beach, LLC
9 alleging claims for: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) failure to provide
10 meal periods; (4) failure to provide rest periods; (5) failure to timely pay wages during employment; (6)
11 failure to timely pay wages at separation; (7) failure to furnish accurate itemized wage statements; (8)
12 failure to indemnify business expenditures; and (9) unfair competition (the “Rodriguez Class Action”).
13 On March 15, 2023, Plaintiff Rodriguez filed a related representative PAGA complaint in Orange
14 County Superior Court, Case No. 30-2023-01312472-CU-OE-CXC alleging claims for civil penalties
15 predicated on the same or similar alleged Labor Code violations as the class action complaint as well as
16 claims premised on the failure to provide employment records, failure to provide notice required under
17 Labor Code Section 2810.5, failure to provide the proper accrual and use of sick leave, and failure to pay
18 out paid time off and vacation wages at the proper rate of pay (the “Rodriguez PAGA Action,” and with
19 the Rodriguez Class Action, the “Rodriguez Action”).

20 5. Based on information and belief: On November 30, 2023, plaintiff Graciela Lopez
21 (“Plaintiff Lopez”) brought a PAGA Representative Action against KBS in Santa Clara County Superior
22 Court, Case No. Case No. VCU304923, for civil penalties based on underlying Labor Code violations
23 for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to indemnify
24 business expenditures; (4) failure to timely pay wages at separation; (5) failure to provide accurate and
25 itemized wage statements; and (6) unfair competition in violation of the UCL. On January 5, 2024,
26 Plaintiff Lopez brought a Class Action Complaint against KBS in Tulare County Superior Court, Case
27 No. VCU304923, for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to
28 indemnify business expenditures; (4) failure to timely pay wages at separation; (5) failure to provide

1 accurate and itemized wage statements; and (6) unfair competition in violation of the UCL (“Lopez
2 Action”).

3 6. On September 27, 2024, the Parties participated in an all-day global mediation presided
4 over by experienced wage and hour mediator, Michael E. Dickstein, Esq., which ultimately led to a
5 settlement to settle the Action on a class and PAGA basis, as well as the separately filed actions and the
6 claims alleged therein. It is my opinion that the Settlement constitutes a fair, adequate, and reasonable
7 compromise of the claims at issue. This opinion is informed by my experience litigating and settling
8 wage and hour actions, and my firm’s thorough investigation into the factual and legal issues implicated
9 by Plaintiffs’ claims and Defendants’ defenses.

10 CAPSTONE LAW APC FIRM PROFILE

11 7. Since its founding in 2012, Capstone has emerged as a major force in aggregate
12 litigation, making law on cutting-edge issues.

13 8. In February, 2015, Ryan H. Wu and I were honored with the *California Lawyer*
14 Attorney of the Year (CLAY) award in labor and employment for our work in the landmark case
15 *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of
16 California workers to bring representative actions under the Labor Code Private Attorneys General Act
17 (“PAGA”) notwithstanding a representative action waiver in an arbitration agreement.

18 9. Recognized as a leading firm in the prosecution of PAGA enforcement actions,
19 Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior*
20 *Court (Marshalls of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision
21 before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v.*
22 *Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully
23 argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.

24 10. Capstone has made important contributions to consumer protection law. In *McGill v.*
25 *Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the
26 right to seek public injunctive relief under the state’s consumer protection laws cannot be waived and
27 that consumers need not satisfy class certification requirements to enjoin unfair business practices on
28 behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed

1 a denial of class certification, making law that clarified the use of “benefit of the bargain” damages
2 models in consumer class actions.

3 11. Capstone served as class counsel in a number of significant wage and hour settlements,
4 including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case
5 No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v.*
6 *Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of
7 pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour*
8 *Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an
9 \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.

10 12. Capstone has an established practice in automotive defect class actions and is currently
11 appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No.
12 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A.,*
13 *Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

14 13. Capstone has settled over 100 high-stakes class and representative actions. Capstone’s
15 settlements have directly compensated hundreds of thousands of California workers and consumers.
16 Capstone’s actions have also forced employers to modify their policies for the benefit of employees,
17 including changing the compensation structure for commissioned employees and changing practices to
18 ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA
19 enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of
20 California.

21 14. The following is a representative sample of Capstone’s settlements:

- 22 a. *Navarro v. United Parcel Service, Inc.*, No. BC592098 (LA County
23 Superior Court): gross settlement of \$16.5 million on behalf of
24 approximately 180,000 non-exempt employees for wage and hour
25 violations;
- 26 b. *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-
27 PLA (N.D. Cal.): gross settlement of \$12 million on behalf of
28 approximately 150,000 personal bankers, tellers, sales associates, and

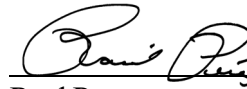
- assistant branch manager trainees for wage and hour violations;
- c. *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- d. *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- e. *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- f. *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- g. *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- h. *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- i. *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- j. *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- k. *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 non-exempt employees;
- l. *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt

workers for meal break and wage statement claims;

- m. *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- n. *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- o. *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

15. Attached as **Exhibit 2** is a true and correct copy of Capstone's firm resume.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of March, 2026, at Los Angeles, California.



Raul Perez

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

July 26, 2022

VIA ONLINE SUBMISSION

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

Subject: *Maria Rodriguez De Paz v. Hospitality Staffing Solutions LLC, et al.*

Dear PAGA Administrator:

This office represents Maria Rodriguez De Paz in connection with her claims under the California Labor Code. Ms. Rodriguez De Paz was an employee of HOSPITALITY STAFFING SOLUTIONS LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purpose of this letter, Ms. Rodriguez De Paz collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Rodriguez De Paz intends to seek civil penalties, attorney's 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"). Ms. Rodriguez De Paz seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California 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.

HSS employed Ms. Rodriguez De Paz as an hourly paid, non-exempt employee from approximately October 2021 to February 2022. Ms. Rodriguez De Paz worked as an Operator for HSS at its location in Moreno Valley, California. During her employment, Ms. Rodriguez De Paz typically worked eight (8) hours per day, and five (5) days per week. At the time her employment ended, Ms. Rodriguez De Paz was compensated approximately \$17.00 per hour. Her job duties included, without limitation, preparing crate machinery for daily use, inspecting machinery for safety, stacking crates, and cleaning work areas.

HSS committed one or more of the following Labor Code violations against Ms. Rodriguez De Paz, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, facility, and janitorial services, offering temporary and direct hiring to companies. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its company headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Rodriguez De Paz and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Rodriguez De Paz and other aggrieved employees, regardless of their location or position.

Upon information and belief, HSS maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for HSS in California, including Ms. Rodriguez De Paz and other aggrieved employees. Further, HSS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Rodriguez De Paz and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HSS utilized the same methods and formulas when calculating wages due to Ms. Rodriguez De Paz 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 Industrial Welfare Commission (“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.

HSS willfully failed to pay all overtime wages owed to Ms. Rodriguez De Paz and other aggrieved employees. During the relevant time period, Ms. Rodriguez De Paz and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a

¹ These facts, theories, and claims are based on Ms. Rodriguez De Paz’s experience and counsel’s review of those records currently available relating to Ms. Rodriguez De Paz’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, Ms. Rodriguez De Paz’s reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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, during the relevant period, HSS had a policy and/or practice of discouraging and impeding Ms. Rodriguez De Paz and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads, deadlines, and productivity requirements, led Ms. Rodriguez De Paz and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, HSS required Ms. Rodriguez De Paz and other aggrieved employees to prepare a minimum of two pallets, with 160 boxes stacked on each pallet before the end of a shift. Approximately twice per week, Ms. Rodriguez De Paz was required to clock out and continue working for up to 15 minutes to complete the preparation of pallets at the request of management. When this occurred, Ms. Rodriguez De Paz was unable to record this off-the-clock work because HSS's management prohibited her from recording these overtime hours. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to Ms. Rodriguez De Paz and other aggrieved employees.

Further, during the relevant period, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Rodriguez De Paz and/or other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to their shifts, employees were required to spend time filling out a health screening form and undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these health screenings, HSS did not provide Ms. Rodriguez De Paz and/or other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Second, HSS's company-wide policies and/or practices of understaffing its job sites while assigning heavy workloads and deadlines resulted in a failure to provide Ms. Rodriguez De Paz and/or other aggrieved employees with adequate meal period coverage to permit them to take compliant meal periods. HSS also failed to schedule meal periods, which further caused Ms. Rodriguez De Paz and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. Further, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that as a result of these company-wide practices and/or policies, Ms. Rodriguez De Paz and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Rodriguez De Paz 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.

Furthermore, HSS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, HSS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However,

in violation of the California Labor Code, HSS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, HSS failed to pay all overtime wages by paying a lower overtime rate than required.

Accordingly, Ms. Rodriguez De Paz and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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 Wage Order No. 9-2001 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, § 11090(2)(H) (defining "Hours Worked").

As stated, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Rodriguez De Paz and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Rodriguez De Paz and/or other employees were required to perform work off-the-clock before and after their scheduled shifts, including completing work-related tasks and submitting to mandated pre-shift COVID-19 temperature checks and health screenings, but were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing; assigning heavy workloads, deadlines, and productivity requirements; failing to schedule meal periods; and the resulting lack of coverage, Ms. Rodriguez De Paz and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to limit meal penalties that HSS would otherwise owe, HSS pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Rodriguez De Paz and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, HSS 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, HSS regularly failed to pay at least minimum wages to Ms. Rodriguez De Paz 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. Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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.

During the relevant time period, as stated, HSS had, and continues to have, a company-wide policy and/or practice of understaffing its locations while simultaneously assigning heavy workloads, deadlines, and productivity requirements, which resulted in a lack of meal period coverage and prevented Ms. Rodriguez De Paz and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Rodriguez De Paz and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Rodriguez De Paz and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately three (3) times per week, Ms. Rodriguez De Paz was unable to take her meal period until her sixth hour of work, in order to meet productivity requirements and finish her assigned duties.

Moreover, as stated, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS's management pressured Ms. Rodriguez De Paz and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that HSS would otherwise owe. For example, at HSS's management's direction, Ms. Rodriguez De Paz would log that her meal period was taken within the first five (5) hours of her shift, even though she was only able to take her meal periods until after her sixth hour of work.

Additionally, HSS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Rodriguez De Paz 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.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were

entitled. Furthermore, HSS's meal period waiver form requires employees to provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Rodriguez De Paz and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Rodriguez De Paz and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Rodriguez and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, HSS knew or should have known that, as a result of these policies, Ms. Rodriguez De Paz and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Rodriguez De Paz and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of HSS's practices and/or policies, Ms. Rodriguez De Paz and/or other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Rodriguez De Paz and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, 269-270 (2016).

During the relevant time period, HSS regularly failed to authorize and permit Ms. Rodriguez De Paz and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's company-wide practices, including understaffing and assigning heavy workloads, deadlines, and productivity requirements, prevented Ms. Rodriguez De Paz and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, HSS failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Rodriguez De Paz and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, during the relevant time period, HSS maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Rodriguez De Paz and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Rodriguez De Paz and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Rodriguez De Paz and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Rodriguez De Paz and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Rodriguez De Paz would have to forego many of her rest periods altogether due to the heavy workload and deadlines assigned to her.

HSS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Rodriguez De Paz and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Rodriguez De Paz and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. HSS has not provided Ms. Rodriguez De Paz 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, HSS has knowingly and intentionally provided Ms. Rodriguez De Paz and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Rodriguez De Paz 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, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because HSS did not record the time Ms. Rodriguez De Paz and other aggrieved employees spent working off-the-clock, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Rodriguez De Paz and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Rodriguez De Paz 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).

Also, because HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS also failed to list the correct amount of net wages in violation of section 226(a)(5). HSS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, 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 the hours they 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), HSS willfully failed to maintain accurate payroll records for Ms. Rodriguez De Paz 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, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Rodriguez De Paz and other aggrieved employees in violation of section 1198. Furthermore, in light of HSS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Rodriguez De Paz 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, Ms. Rodriguez De Paz 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.

Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 201.3 and 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.

California Labor Code section 201.3 provides that if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS failed to pay Ms. Rodriguez De Paz 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 sections 201.3 and/or 204.

Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, 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.

On information and belief, HSS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Rodriguez De Paz did not receive her final pay until one (1) week after being terminated by HSS. Thus, HSS failed to pay Ms. Rodriguez De Paz and other aggrieved employees their final wages immediately, in violation of California Labor Code sections 201 and/or 201.3.

Additionally, HSS willfully failed to pay Ms. Rodriguez De Paz and other aggrieved employees who are no longer employed by HSS all their earned wages, 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 HSS's employ.

Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

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 9-2001, 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. 9-2001 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, HSS, on a company-wide basis, required Ms. Rodriguez De Paz and other aggrieved employees to use their own 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 cost of their work-related mobile device expenses. Specifically, Ms. Rodriguez De Paz used her personal cellular phone to photograph completed pallets and send those pictures to her manager. Although HSS required Ms. Rodriguez De Paz and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for these costs.

Additionally, during the relevant time period, HSS expected Ms. Garcia and other aggrieved employees to "be in full uniform daily, [with the] uniform regularly cleaned and free of stains upon arrival at work each day while assigned with HSS." Furthermore, HSS's written uniform policy states, "Once issued, company uniforms become the employee's responsibility for maintenance and care" Ms. Rodriguez De Paz and other aggrieved employees were thus required to report to work wearing clean and presentable uniforms bearing the company logo, including uniform shirts and safety vests, on a daily basis. However, HSS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, HSS only provided Ms. Rodriguez De Paz with one (1) shirt and one (1) safety vest at the beginning of her employment. Because HSS failed to provide Ms. Rodriguez De Paz with an adequate number of uniform items in relation to her scheduled shifts and for the tasks she was required to perform, Ms. Rodriguez De Paz was forced to wash her uniform items more frequently than she would otherwise do laundry and incur expenses in doing so. For example, due to the nature of work involved in operating machinery, Ms. Rodriguez De Paz's uniform items would become stained with dirt and grime, such that she was unable to mix these clothes in with her other laundry. As a result, she had to wash their uniform items separately from any other clothing items and thus incurred additional utility and laundry expenses for the upkeep of her uniforms. Thus, HSS failed to maintain the uniforms it required Ms. Rodriguez De Paz and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

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

Thus, HSS 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. Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.

HSS failed to provide Ms. Rodriguez De Paz and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). HSS's failure to provide Ms. Rodriguez De Paz and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Rodriguez De Paz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.” HSS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Rodriguez De Paz’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Rodriguez De Paz seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Rodriguez De Paz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 203, 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, Ms. Rodriguez De Paz seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Rodriguez De Paz’s reasonable attempt to settle her dispute with HSS prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform HSS while affording HSS a reasonable opportunity to satisfy Ms. Rodriguez De Paz’s demands.

Demand is hereby made that HSS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. HSS shall pay Ms. Rodriguez De Paz and all other aggrieved employees employed by HSS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. HSS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. HSS shall conduct a survey or interview all current and former aggrieved employees in California who worked for HSS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted, and the number of employees who were required to pay for mobile device expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. HSS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. HSS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. HSS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for HSS's benefit, including, but not limited to, mobile device expenses and uniform maintenance, as required by Labor Code section 2802.
6. HSS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. HSS shall provide Ms. Rodriguez De Paz and all aggrieved employees employed by HSS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. HSS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

HSS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 9-2001, section 20.

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

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

Best Regards,



Jezzette Ron

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

Capstone
LAW LLC

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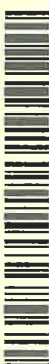
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3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056



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

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1. Article Addressed to:

KELLERMEYER BERGENSONS SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056



9590 9402 7420 2055 3570 82

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C. Date of Delivery

7/28/22

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ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 30, 2023

VIA ONLINE SUBMISSION

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

Subject: *Juana Matias v. Hospitality Staffing Solutions, LLC, et al.*

Dear PAGA Administrator:

This office represents Juana Matias in connection with her claims under the California Labor Code. Ms. Matias was an employee of HOSPITALITY STAFFING SOLUTIONS, LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purposes of this letter, Ms. Matias collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Matias intends to seek civil penalties, attorney's 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"). Ms. Matias seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California 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.

HSS employed Ms. Matias as an hourly paid, non-exempt employee from approximately January 2019 to August 2022. Ms. Matias worked as a Housekeeper at HSS's jobsite located in Aptos, California. Ms. Matias typically worked eight (8) hours per day or more, and five (5) days per week or more. At the time Ms. Matias's employment ended with HSS, she was compensated approximately \$20.00 per hour. Her primary job duties included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

HSS committed one or more of the following Labor Code violations against Ms. Matias, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Matias and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Matias and other aggrieved employees, regardless of their location or position.

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

HSS willfully failed to pay all overtime wages owed to Ms. Matias and other aggrieved employees. During the relevant time period, Ms. Matias 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 ten (10)

¹ These facts, theories, and claims are based on Ms. Matias’s experience and counsel’s review of those records currently available relating to Ms. Matias’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, Ms. Matias reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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, HSS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Matias and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads (*see infra*), led Ms. Matias and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

For example, Ms. Matias was required to arrive up to 30 minutes prior to her scheduled shift-start times and begin working—preparing her cleaning caddy bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet HSS's expectations of completing daily tasks within her scheduled shift hours. For the same reasons, Ms. Matias and other aggrieved employees were required to continue working 10-15 minutes after their scheduled shift end-times, completing tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and returning their cleaning caddy bags to the housekeeping storage area, before they could leave for the day. When this occurred, Ms. Matias and other aggrieved employees were unable to record this off-the-clock work because HSS's management prohibited them from recording these overtime hours and did not provide them a means to account for this time. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to Ms. Matias and other aggrieved employees.

Second, during the relevant time period, HSS only provided Ms. Matias and other aggrieved employees with a single timekeeping machine at its clients' facilities to clock in for a shift, thus exacerbating the amount of time Ms. Matias and other aggrieved employees waited in line off-the-clock and under HSS's control, time for which they were paid. For example, Ms. Matias and other aggrieved employees would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-30 housekeeping employees and wait at least several minutes to clock in. Moreover, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Matias and other aggrieved employees undergo mandatory COVID-19 temperature checks. Prior to their shifts, Ms. Matias and other aggrieved employees were required to spend time undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these temperature checks, HSS did not provide Ms. Matias and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks.

Third, as stated, HSS had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Ms. Matias and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Matias and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. In addition, HSS also had a practice of failing to schedule meal periods, which further caused Ms. Matias and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Matias was required to work through her meal periods approximately three (3) times per week in order to complete her assigned duties. As another example, other aggrieved employees' meal periods were interrupted because they would be required to answer questions from their supervisor regarding the status of completing assigned guest rooms or to inform them that a

guest had arrived early to the hotel and was ready to check in for their room. Thus, Ms. Matias and other aggrieved employees worked through their meal periods and/or had meal periods interrupted or cut short in order to complete their assigned workloads. HSS did not pay Ms. Matias and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Matias and other aggrieved employees remain on HSS's premises during their unpaid meal periods. Because Ms. Matias 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. For example, Ms. Matias and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, HSS effectively maintained control over Ms. Matias and other aggrieved employees during their unpaid meal periods.

Moreover, on information and belief, HSS had a company-wide practice and/or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, HSS's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. HSS knew or should have known that other aggrieved employees were performing work while off-the-clock in order to meet HSS's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS falsified and/or adjusted Ms. Matias's and/or other aggrieved employees' time records and/or pressured Ms. Matias and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, while Ms. Matias was busy completing her assigned tasks, she would receive calls from her supervisor requesting she give him her employee PIN code so he could clock out Ms. Matias for her meal periods in order to make them appear compliant. As another example, while other aggrieved employees were too busy with their workloads to take a compliant meal period, their supervisors would tell them not to worry about accruing a meal period penalty because they would adjust other aggrieved employees' meal period punch times to make them appear compliant.

Furthermore, HSS's company-wide timekeeping system prevented Ms. Matias and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Matias and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, HSS did not record all hours worked during meal periods and Ms. Matias and other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Matias and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Matias 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, Ms. Matias and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, HSS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, HSS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration. However, in violation of the California Labor Code, HSS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, HSS failed to pay all overtime wages by paying a lower overtime rate than required.

HSS's failure to pay Ms. Matias 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. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. 5-2001 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, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Matias and other aggrieved employees were required to perform work off-the-clock, including, but not limited to, completing work-related tasks, waiting to clock in, and submitting to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on the work premises during meal periods, requiring employees to carry and use their company-issued radio during unpaid meal periods, and/or resultant lack of meal period coverage, Ms. Matias 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.

Moreover, as stated, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Matias's and/or other aggrieved employees' times records and/or pressured Ms. Matias and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Matias and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Matias and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime

premium payment, HSS 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, HSS regularly failed to pay at least minimum wages to Ms. Matias 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. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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, as stated, HSS had, and continues to have, company-wide policies and/or practices of understaffing, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Matias and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Matias and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Matias and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Matias was required to take her meal periods late in order to meet guest check-in timeframes and to keep up with HSS's productivity expectations. As another example, Ms. Matias had her meal periods interrupted or cut short by supervisors discussing the status of assigned guest rooms.

Specifically, according to Ms. Matias's time records, on June 23, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at the end of her shift at 4:01 p.m., working a total of six (6) hours and five (5) minutes (or 6.08 hours) without clocking out for a meal period; on June 3, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at the end of her shift at 4:01 p.m., working a total of six (6) hours and five (5) minutes (or 6.08 hours) without clocking out for a meal period; on May 25, 2022, she clocked in at the start of her shift at 8:58 a.m. and clocked out at the end of her shift at 2:58 p.m., working a total of six (6) hours (or 6.00 hours) without clocking out for a meal period; on May 19, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at

the end of her shift at 3:55 p.m., working a total of five (5) hours and 59 minutes (or 5.98 hours) without clocking out for a meal period; on May 21, 2022, she clocked in at the start of her shift at 9:57 a.m. and clocked out at the end of her shift at 4:00 p.m., working a total of six (6) hours and three (3) minutes (or 6.05 hours) without clocking out for a meal period; on April 27, 2022, she clocked in at the start of her shift at 9:55 a.m. and clocked out at the end of her shift at 3:46 p.m., working a total of five (5) hours and 51 minutes (or 5.85 hours) without clocking out for a meal period; on August 23, 2022, she clocked in at the start of her shift at 9:57 a.m. and clocked out at the end of her shift at 3:58 p.m., working a total of six (6) hours and one (1) minute (or 6.02 hours) without clocking out for a meal period; on April 2, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out at the end of her shift at 3:58 p.m., working a total of six (6) hours and two (2) minutes (or 6.03 hours) without clocking out for a meal period; and on August 13, 2022, she clocked in at the start of her shift at 9:59 a.m. and clocked out at the end of her shift at 4:00 p.m., working a total of six (6) hours and one (1) minute (or 6.02 hours) without clocking out for a meal period. As another example, according to Ms. Matias's time records, on April 1, 2022, she clocked in at the start of her shift at 9:56 a.m. and clocked out for her meal period at 3:20 p.m., working a total of five (5) hours and 24 minutes (or 5.40 hours), before she was able to take her meal period.

Second, as stated, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Matias and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Matias 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, such as running personal errands. Thus, HSS effectively maintained control over Ms. Matias and other aggrieved employees during meal periods.

Moreover, as stated above, HSS had, and continues to have, a company-wide policy and/or practice of requiring that other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, other aggrieved employees' meal periods were interrupted by HSS's management calling them to discuss work-related matters.

Third, as set forth above, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Matias's and/or other aggrieved employees' time records and/or pressured Ms. Matias and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay Ms. Matias and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Matias and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Fourth, HSS did not provide Ms. Matias and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Ms. Matias worked shifts in excess of ten (10) hours per day but was not provided a second 30-minute meal period. Ms. Matias 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.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were

entitled. Moreover, HSS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Matias and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Matias and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Matias and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, HSS knew or should have known that as a result of its policies, Ms. Matias and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Matias and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Matias and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, HSS regularly failed to authorize and permit Ms. Matias and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Matias and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HSS also failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Matias and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HSS maintained a company-wide on-premises rest period policy, which mandated that Ms. Matias and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Matias and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Matias and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Matias 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 10-minute rest periods to which they were entitled. For example, Ms. Matias would regularly have to forego their rest periods altogether due to the heavy workload and lack of rest period coverage. When Ms. Matias was able to take her rest periods, they were often interrupted because she was required to discuss the status of completing her assigned guest rooms.

HSS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Matias and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Matias and other aggrieved employees are entitled to

recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. HSS has not provided Ms. Matias 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, HSS has knowingly and intentionally provided Ms. Matias and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Matias and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; 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, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because HSS did not record the time Ms. Matias and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Matias and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Matias 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 HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS failed to list the correct amount of net wages in violation of section 226(a)(5). HSS 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).

Third, and separately from these violations, HSS issued uniform wage statements to Ms. Matias and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an

administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, HSS systematically, and on a company-wide basis, issued wage statements to Ms. Matias and other aggrieved employees that fail to list the employing entity's name and address.

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; and/or failing to state all hours worked as a result of not recording or stating the 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. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HSS willfully failed to maintain accurate payroll records for Ms. Matias 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, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Matias and other aggrieved employees, in violation of section 1198. Also, in light of HSS's failure to provide Ms. Matias and other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Matias 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, Ms. Matias 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.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201.3 and 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.

At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS willfully failed to pay Ms. Matias and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, 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.

During the relevant time period, on information and belief, HSS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HSS terminated Ms. Matias on or about August 28, 2022. However, HSS did not provide her with her final paycheck until one (1) week later. Thus, HSS failed to pay Ms. Matias her final wages immediately, in violation of Labor Code section 201 and/or 201.3.

Additionally, HSS willfully failed to pay Ms. Matias and other aggrieved employees who are no longer employed by HSS the earned and unpaid wages set forth above, including but not limited to,

overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving HSS's employ.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, HSS unlawfully deducted a portion of wages previously paid to Ms. Matias and other aggrieved employees in violation of California Labor Code section 221. On information and belief, HSS systematically, and on a company-wide basis, provided Ms. Matias and other aggrieved employees with payroll debit cards as payment of their wages. Under HSS's payroll debit card program, Ms. Matias and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, Ms. Matias was required to pay out-of-network ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to obtain and/or spend her earned and due wages. The fees charged to Ms. Matias and other aggrieved employees resulted in a discount of their wages.

HSS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Ms. Matias's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, HSS willfully and systematically issued payroll debit cards to Ms. Matias and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. HSS's payroll debit card program resulted in the payment of less than statutorily required wages to Ms. Matias and other aggrieved employees. In doing so, HSS acted with the intent to deprive Ms. Matias and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, HSS paid Ms. Matias and other aggrieved employees lower wages than those they were entitled to while purporting that Ms. Matias and other aggrieved employees were properly paid.

HSS's failure to pay Ms. Matias and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Ms. Matias and

other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HSS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because HSS failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

HSS had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, on occasions when other aggrieved employees reported to work for their scheduled shifts, HSS’s management sent other aggrieved employees home before they had worked at least half of their scheduled shift because business was slow, but other aggrieved employees were only paid for the time they had worked. Although other aggrieved employees would report to work based on the schedule that HSS provided to them, HSS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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. 5-2001, 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.”

During the relevant time period, HSS, on a company-wide basis, required that Ms. Matias and other aggrieved employees use their own 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 expenses. Specifically, Ms. Matias used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned guest suites and other work-related tasks, and was further required to watch training videos on proper cleaning techniques on her personal cellular phone. Although HSS required Ms. Matias and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for this cost.

HSS could have provided Ms. Matias and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, HSS could have reimbursed employees for the costs of their mobile device usage. Instead, HSS passed these operating costs off onto Ms. Matias and other aggrieved employees. At all relevant times, Ms. Matias did not earn at least two (2) times the minimum wage.

Thus, HSS 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. Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.

HSS failed to provide Ms. Matias 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). HSS’s failure to provide Ms. Matias and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Matias and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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.” HSS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Matias’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Matias seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Matias, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 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, Ms. Matias seeks all applicable civil 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:

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

Best Regards,


Anthony Castillo

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

CERTIFIED MAIL

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A. Signature

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HOSPITALITY STAFFING

SOLUTIONS, LLC

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ATLANTA, GA 30342



9590 9402 7690 2122 7157 74

2. Article Number (Transfer from service label)

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

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Discussion

1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2405 7828

KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056



9590 9402 7690 2122 7175 01

2 Article Number (Transfer from service label)

7022 2410 0000 2405 7828

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

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B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

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

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1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 30, 2023

VIA ONLINE SUBMISSION

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

Subject: *Carmen Chavez Fernandez v. Hospitality Staffing Solutions, LLC, et al.*

Dear PAGA Administrator:

This office represents Carmen Chavez Fernandez in connection with her claims under the California Labor Code. Ms. Chavez Fernandez was an employee of HOSPITALITY STAFFING SOLUTIONS, LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purposes of this letter, Ms. Chavez Fernandez collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Chavez Fernandez intends to seek civil penalties, attorney's 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"). Ms. Chavez Fernandez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California 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.

HSS employed Ms. Chavez Fernandez as an hourly paid, non-exempt employee from approximately December 2018 to August 2022. Ms. Chavez Fernandez worked as a Housekeeper at HSS's jobsite located in Aptos, California. Ms. Chavez Fernandez typically worked eight (8) hours per day or more, and five (5) days per week or more. At the time Ms. Chavez Fernandez's employment ended with HSS, she was compensated approximately \$20.00 per hour. Her primary job duties included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

HSS committed one or more of the following Labor Code violations against Ms. Chavez Fernandez, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Chavez Fernandez and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Chavez Fernandez and other aggrieved employees, regardless of their location or position.

Upon information and belief, HSS maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for HSS in California, including Ms. Chavez Fernandez and other aggrieved employees. Further, HSS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Chavez Fernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HSS utilized the same methods and formulas when calculating wages due to Ms. Chavez Fernandez 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 Industrial Welfare Commission (“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.

HSS willfully failed to pay all overtime wages owed to Ms. Chavez Fernandez and other aggrieved employees. During the relevant time period, Ms. Chavez Fernandez and other aggrieved employees

¹ These facts, theories, and claims are based on Ms. Chavez Fernandez’s experience and counsel’s review of those records currently available relating to Ms. Chavez Fernandez’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, Ms. Chavez Fernandez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) 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, HSS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Chavez Fernandez and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads (*see infra*), led Ms. Chavez Fernandez and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

For example, Ms. Chavez Fernandez was required to arrive 5-10 minutes prior to her scheduled shift-start times and begin working—preparing her cleaning caddy bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet HSS's expectations of completing daily tasks within her scheduled shift hours. For the same reasons, Ms. Chavez Fernandez and other aggrieved employees were required to continue working 10-15 minutes after their scheduled shift end-times, completing tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and returning their cleaning caddy bags to the housekeeping storage area, before they could leave for the day. When this occurred, Ms. Chavez Fernandez and other aggrieved employees were unable to record this off-the-clock work because HSS's management prohibited them from recording these overtime hours and did not provide them a means to account for this time. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to Ms. Chavez Fernandez and other aggrieved employees.

Second, during the relevant time period, HSS only provided Ms. Chavez Fernandez and other aggrieved employees with a single timekeeping machine at its clients' facilities to clock in for a shift, thus exacerbating the amount of time Ms. Chavez Fernandez and other aggrieved employees waited in line off-the-clock and under HSS's control, time for which they were paid. For example, Ms. Chavez Fernandez and other aggrieved employees would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-30 housekeeping employees and wait at least several minutes to clock in. Moreover, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Chavez Fernandez and other aggrieved employees undergo mandatory COVID-19 temperature checks. Prior to their shifts, Ms. Chavez Fernandez and other aggrieved employees were required to spend time undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these temperature checks, HSS did not provide Ms. Chavez Fernandez and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks.

Third, as stated, HSS had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Ms. Chavez Fernandez and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Chavez Fernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. In addition, HSS also had a practice of failing to schedule meal periods, which further caused Ms. Chavez Fernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Chavez Fernandez's meal periods were interrupted because they would be required to answer questions from their supervisor regarding the

status of completing assigned guest rooms or to inform them that a guest had arrived early to the hotel and was ready to check in for their room. Similarly, other aggrieved employees were required to work through their meal periods in order to complete their assigned duties. Thus, Ms. Chavez Fernandez and other aggrieved employees worked through their meal periods and/or had meal periods interrupted or cut short in order to complete their assigned workloads. HSS did not pay Ms. Chavez Fernandez and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Chavez Fernandez and other aggrieved employees remain on HSS's premises during their unpaid meal periods. Because Ms. Chavez Fernandez 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. For example, Ms. Chavez Fernandez and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, HSS effectively maintained control over Ms. Chavez Fernandez and other aggrieved employees during their unpaid meal periods.

Moreover, on information and belief, HSS had a company-wide practice and/or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, HSS's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. HSS knew or should have known that other aggrieved employees were performing work while off-the-clock in order to meet HSS's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS falsified and/or adjusted Ms. Chavez Fernandez's and/or other aggrieved employees' time records and/or pressured Ms. Chavez Fernandez and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, while Ms. Chavez Fernandez was too busy with her workload to take a compliant meal period, her supervisor would tell her not to worry about accruing a meal period penalty because she would adjust Ms. Chavez Fernandez's meal period punch times to make them appear compliant. As another example, while other aggrieved employees were busy completing their assigned tasks, they would receive calls from their supervisors requesting they give them their employee PIN code so they could clock out other aggrieved employees for their meal periods in order to make them appear compliant.

Furthermore, HSS's company-wide timekeeping system prevented Ms. Chavez Fernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Chavez Fernandez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, HSS did not record all hours worked during meal periods and Ms. Chavez Fernandez and other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Chavez Fernandez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Chavez Fernandez 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, Ms. Chavez Fernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

HSS's failure to pay Ms. Chavez Fernandez 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. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. 5-2001 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, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Chavez Fernandez and other aggrieved employees were required to perform work off-the-clock, including, but not limited to, completing work-related tasks, waiting to clock in, and submitting to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on the work premises during meal periods, requiring employees to carry and use their company-issued radio during unpaid meal periods, and/or resultant lack of meal period coverage, Ms. Chavez Fernandez 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.

Moreover, as stated, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Chavez Fernandez's and/or other aggrieved employees' times records and/or pressured Ms. Chavez Fernandez and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically

failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Chavez Fernandez and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, HSS systematically failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Chavez Fernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HSS 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, HSS regularly failed to pay at least minimum wages to Ms. Chavez Fernandez 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. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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, as stated, HSS had, and continues to have, company-wide policies and/or practices of understaffing, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Chavez Fernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Chavez Fernandez and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Chavez Fernandez and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Chavez Fernandez was required to take her meal periods late in order to meet guest check-in timeframes and to keep up with HSS's productivity expectations. As another example, Ms. Chavez Fernandez had her meal periods interrupted or cut short by supervisors discussing the status of assigned guest rooms.

Second, as stated, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Chavez Fernandez and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Chavez Fernandez 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, such as running personal errands. Thus, HSS effectively maintained control over Ms. Chavez Fernandez and other aggrieved employees during meal periods.

Moreover, as stated above, HSS had, and continues to have, a company-wide policy and/or practice of requiring that other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, other aggrieved employees' meal periods were interrupted by HSS's management calling them to discuss work-related matters.

Third, as set forth above, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Chavez Fernandez's and/or other aggrieved employees' time records and/or pressured Ms. Chavez Fernandez and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay Ms. Chavez Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Chavez Fernandez and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Fourth, HSS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours per day were not provided a second 30-minute meal period. Ms. Chavez Fernandez 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.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, HSS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Chavez Fernandez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written

agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Chavez Fernandez and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Chavez Fernandez and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, HSS knew or should have known that as a result of its policies, Ms. Chavez Fernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Chavez Fernandez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Chavez Fernandez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, HSS regularly failed to authorize and permit Ms. Chavez Fernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Chavez Fernandez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HSS also failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Chavez Fernandez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HSS maintained a company-wide on-premises rest period policy, which mandated that Ms. Chavez Fernandez and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Chavez Fernandez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Chavez Fernandez and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Chavez Fernandez 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 10-minute rest periods to which they were entitled. For example, Ms. Chavez Fernandez would regularly have to forego her rest periods altogether due to the heavy workload and lack of rest period coverage. When Ms. Chavez Fernandez was able to take their rest periods, they were often interrupted because she was required to discuss the status of completing her assigned guest rooms.

HSS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Chavez Fernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay Ms. Chavez Fernandez and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay Ms. Chavez Fernandez and other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. HSS has not provided Ms. Chavez Fernandez 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, HSS has knowingly and intentionally provided Ms. Chavez Fernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Chavez Fernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; 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, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because HSS did not record the time Ms. Chavez Fernandez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Chavez Fernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Chavez Fernandez 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 HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS failed to list the correct amount of net wages in violation of section 226(a)(5). HSS 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).

Third, and separately from these violations, HSS issued uniform wage statements to Ms. Chavez Fernandez and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, HSS systematically, and on a company-wide basis, issued wage statements to Ms. Chavez Fernandez and other aggrieved employees that fail to list the employing entity's name and address.

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; and/or failing to state all hours worked as a result of not recording or stating the 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. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HSS willfully failed to maintain accurate payroll records for Ms. Chavez Fernandez 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, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Chavez Fernandez and other aggrieved employees, in violation of section 1198. Also, in light of HSS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Chavez Fernandez 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, Ms. Chavez Fernandez 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.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201.3 and 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.

At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS willfully failed to pay Ms. Chavez Fernandez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, 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.

During the relevant time period, on information and belief, HSS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HSS terminated Ms. Chavez Fernandez on or about August 28, 2022. However, HSS did not provide her with her final paycheck until one (1) week later. Thus, HSS failed to pay Ms. Chavez Fernandez her final wages immediately, in violation of Labor Code section 201 and/or 201.3.

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

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, HSS unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, HSS systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under HSS's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay out-of-network ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

HSS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, HSS willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. HSS's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, HSS acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, HSS paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

HSS's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The

“primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HSS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because HSS failed to pay Ms. Chavez Fernandez and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

HSS had a company-wide practice of sending Ms. Chavez Fernandez and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, HSS’s managers sent Ms. Chavez Fernandez home within one (1) hour from the start of her shift because business was slow, but she was only paid for the time she had worked. Although Ms. Chavez Fernandez and other aggrieved employees would report to work based on the schedule that HSS provided to them, HSS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Chavez Fernandez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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. 5-2001, 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.”

During the relevant time period, HSS, on a company-wide basis, required that Ms. Chavez Fernandez and other aggrieved employees use their own 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 expenses. Specifically, Ms. Chavez Fernandez used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned guest suites and other work-related tasks, and was further required to watch training videos on proper cleaning techniques on her personal cellular phone. Although HSS required Ms. Chavez Fernandez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for this cost.

HSS could have provided Ms. Chavez Fernandez and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, HSS could have reimbursed

employees for the costs of their mobile device usage. Instead, HSS passed these operating costs off onto Ms. Chavez Fernandez and other aggrieved employees. At all relevant times, Ms. Chavez Fernandez did not earn at least two (2) times the minimum wage.

Thus, HSS 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. Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.

HSS failed to provide Ms. Chavez Fernandez 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). HSS's failure to provide Ms. Chavez Fernandez and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Chavez Fernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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." HSS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Chavez Fernandez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Chavez Fernandez seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Chavez Fernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 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, Ms. Chavez Fernandez seeks all applicable civil 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "Anthony Castillo", with a stylized, cursive script.

Anthony Castillo

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

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

CERTIFIED MAIL



7022 2410 0000 2405 7842

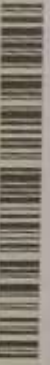
HOSPITALITY STAFFING
SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.

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SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

9590 9402 7690 2122 7157 98



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A. Signature

X

☐ 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

1. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
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2. Signature of Addressee (Print Name)
3. Signature of Addressee (Print Name)
4. Signature of Addressee (Print Name)

1-553

Postmark

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SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

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



7022 2410 0000 2405 7859

KELLERMAYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

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KELLERMAYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

9590 9402 7690 2122 7157 81



2. Article Number (Transfer from service label)
7022 2410 0000 2405 7859

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

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A. Signature

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B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

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

1. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
- ☐ Priority Mail Express
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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445
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KELLERMAYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

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- Print your name and address on the reverse so that we can return the card to you.

**KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056**



9590 9402 7690 2122 7157 81

2. Article Number (Transfer from service label)

7022 2410 0000 2405 7859

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent

☐ Addressee

C. Date of Delivery

4-1-23

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

(over \$500)

Domestic Return Receipt



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 30, 2023

VIA ONLINE SUBMISSION

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

Subject: *Yolanda Membreno de Ayala v. Hospitality Staffing Solutions, LLC, et al.*

Dear PAGA Administrator:

This office represents Yolanda Membreno de Ayala in connection with her claims under the California Labor Code. Ms. Membreno de Ayala was an employee of HOSPITALITY STAFFING SOLUTIONS, LLC and/or KELLERMEYER BERGENSONS SERVICES, LLC. For the purposes of this letter, Ms. Membreno de Ayala collectively refers to these entities as "HSS."

The employers may be contacted directly at the addresses below:

HOSPITALITY STAFFING SOLUTIONS, LLC	KELLERMEYER BERGENSONS SERVICES, LLC
100 GLENRIDGE POINT PKWY STE 400	3605 OCEAN RANCH BOULEVARD, SUITE 200
ATLANTA, GA 30342	OCEANSIDE, CA 92056

Ms. Membreno de Ayala intends to seek civil penalties, attorney's 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"). Ms. Membreno de Ayala seeks relief on behalf of herself, the State of California, and other persons who are or were employed by HSS as a non-exempt, hourly paid employee in California 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.

HSS employed Ms. Membreno de Ayala as an hourly paid, non-exempt employee from approximately June 2019 to August 2022. Ms. Membreno de Ayala worked as a Housekeeper at HSS's jobsite located in Aptos, California. Ms. Membreno de Ayala typically worked eight (8) hours per day or more, and five (5) days per week or more. At the time Ms. Membreno de Ayala's employment ended with HSS, she was compensated approximately \$20.00 per hour. Her primary job duties included, without limitation, making beds, replacing towels and toiletries, vacuuming, and disinfecting kitchens and bathrooms.

HSS committed one or more of the following Labor Code violations against Ms. Membreno de Ayala, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

HOSPITALITY STAFFING SOLUTIONS LLC and KELLERMEYER BERGENSONS SERVICES, LLC are Delaware limited liability companies. HSS is a staffing agency for hospitality, housekeeping, food service, and janitorial industries across the United States with at least 10 agency branch locations in California. Upon information and belief, HSS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for HSS in California, including Ms. Membreno de Ayala and other aggrieved employees. At all relevant times, HSS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Membreno de Ayala and other aggrieved employees, regardless of their location or position.

Upon information and belief, HSS maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for HSS in California, including Ms. Membreno de Ayala and other aggrieved employees. Further, HSS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Membreno de Ayala and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HSS utilized the same methods and formulas when calculating wages due to Ms. Membreno de Ayala 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 Industrial Welfare Commission (“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.

HSS willfully failed to pay all overtime wages owed to Ms. Membreno de Ayala and other aggrieved employees. During the relevant time period, Ms. Membreno de Ayala and other aggrieved

¹ These facts, theories, and claims are based on Ms. Membreno de Ayala’s experience and counsel’s review of those records currently available relating to Ms. Membreno de Ayala’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, Ms. Membreno de Ayala reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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 ten (10) 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, HSS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Membreno de Ayala and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with HSS's practice of understaffing and assignment of heavy workloads (*see infra*), led other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, other aggrieved employees were required to arrive prior to their scheduled shift-start times and begin working—preparing their cleaning caddy bags, re-filling spray bottles with cleaning solution, and gathering replacement toiletries for hotel guest rooms and suites, in order to meet HSS's expectations of completing daily tasks within their scheduled shift hours. For the same reasons, other aggrieved employees were required to continue working after their scheduled shift end-times, completing tasks such as finishing guest suite and room turnover, disposing of cleaning liquids, and returning their cleaning caddy bags to the housekeeping storage area, before they could leave for the day. When this occurred, other aggrieved employees were unable to record this off-the-clock work because HSS's management prohibited them from recording these overtime hours and did not provide them a means to account for this time. This off-the-clock work could have been recorded by HSS, but it refused to do so to avoid payment of overtime wages to other aggrieved employees.

Second, during the relevant time period, HSS only provided Ms. Membreno de Ayala and other aggrieved employees with a single timekeeping machine at its clients' facilities to clock in for a shift, thus exacerbating the amount of time Ms. Membreno de Ayala and other aggrieved employees waited in line off-the-clock and under HSS's control, time for which they were paid. For example, Ms. Membreno de Ayala and other aggrieved employees would be ready to clock in for the start of their shifts, but were required to wait in a line of 25-30 housekeeping employees and wait at least several minutes to clock in. Moreover, HSS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Membreno de Ayala and other aggrieved employees undergo mandatory COVID-19 temperature checks. Prior to their shifts, Ms. Membreno de Ayala and other aggrieved employees were required to spend time undergoing a temperature check, before being permitted to clock in for their shifts. Even though HSS required these temperature checks, HSS did not provide Ms. Membreno de Ayala and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks.

Third, as stated, HSS had, and continue to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Ms. Membreno de Ayala and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. In addition, HSS also had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, other aggrieved employees' meal periods were interrupted because they would be required to answer questions from their supervisor regarding the status of completing assigned guest rooms or to inform them that a guest had arrived early to the hotel and was ready to check in for their room. Similarly, other aggrieved employees were required to work through their meal periods in order to complete their assigned duties. Thus, other aggrieved employees worked through their meal periods and/or

had meal periods interrupted or cut short in order to complete their assigned workloads. HSS did not pay other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Membreno de Ayala and other aggrieved employees remain on HSS's premises during their unpaid meal periods. Because Ms. Membreno de Ayala 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. For example, Ms. Membreno de Ayala and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, HSS effectively maintained control over Ms. Membreno de Ayala and other aggrieved employees during their unpaid meal periods.

Moreover, on information and belief, HSS had a company-wide practice and/or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, HSS's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. HSS knew or should have known that other aggrieved employees were performing work while off-the-clock in order to meet HSS's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because HSS frowned upon employees accruing meal period penalties, HSS falsified and/or adjusted other aggrieved employees' time records and/or pressured other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, while other aggrieved employees were too busy with their workloads to take a compliant meal period, their supervisors would tell them not to worry about accruing a meal period penalty because they would adjust other aggrieved employees' meal period punch times and/or use other aggrieved employees' employee PIN codes to clock out for meal periods, in order to make them appear compliant.

Furthermore, HSS's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, HSS did not record all hours worked during meal periods and other aggrieved employees performed work during meal periods for which they were not paid.

HSS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Membreno de Ayala and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Membreno de Ayala 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, Ms. Membreno de Ayala and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, HSS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, HSS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, HSS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, HSS failed to pay all overtime wages by paying a lower overtime rate than required.

HSS's failure to pay Ms. Membreno de Ayala 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. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. 5-2001 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, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to HSS's company-wide practice of restricting overtime accrual by not recording hours worked that were outside of employees' scheduled shifts, HSS systematically failed to pay Ms. Membreno de Ayala and/or other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Thus, Ms. Membreno de Ayala and other aggrieved employees were required to perform work off-the-clock, including, but not limited to, completing work-related tasks, waiting to clock in, and/or submitting to mandatory pre-shift COVID-19 temperature checks, and were not compensated for this time. Additionally, as set forth above, due to HSS's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to stay on the work premises during meal periods, requiring employees to carry and use their company-issued radio during unpaid meal periods, and/or resultant lack of meal period coverage, Ms. Membreno de Ayala and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, as stated, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted other aggrieved employees' times records and/or pressured other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, HSS systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, HSS did not pay at least minimum wages for all hours worked by Ms. Membreno de Ayala and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HSS 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, HSS regularly failed to pay at least minimum wages to Ms. Membreno de Ayala 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. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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, as stated, HSS had, and continues to have, company-wide policies and/or practices of understaffing, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Membreno de Ayala and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HSS had a company-wide practice of failing to schedule meal periods, which further prevented Ms. Membreno de Ayala and other aggrieved employees from taking all compliant meal periods. As a result of HSS's practices and/or policies, Ms. Membreno de Ayala and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately twice per week, Ms. Membreno de Ayala was required to take her meal periods late in order to meet guest check-in timeframes and to keep up with HSS's productivity expectations. As another example, as stated above, other aggrieved employees had their meal periods interrupted or cut short by supervisors discussing the status of assigned guest rooms.

Second, as stated, on information and belief, HSS maintained a company-wide on-premises meal period policy, which mandated that Ms. Membreno de Ayala and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Membreno de Ayala 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, such as running personal errands. Thus, HSS effectively maintained control over Ms. Membreno de Ayala and other aggrieved employees during meal periods.

Moreover, as stated above, HSS had, and continues to have, a company-wide policy and/or practice of requiring that other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, other aggrieved employees' meal periods were interrupted by HSS's management calling them to discuss work-related matters.

Third, as set forth above, on information and belief, in order to limit meal penalties that HSS would otherwise owe, HSS falsified and/or adjusted Ms. Membreno de Ayala's and/or other aggrieved employees' time records and/or pressured Ms. Membreno de Ayala and/or other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as set forth above, during the relevant time period, HSS systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because HSS's timekeeping system locked out Ms. Membreno de Ayala and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Fourth, HSS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours per day were was not provided a second 30-minute meal period. Ms. Membreno de Ayala 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.

Moreover, HSS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HSS took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, HSS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. HSS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Membreno de Ayala and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HSS required Ms. Membreno de Ayala and other aggrieved employees to sign meal period waivers simultaneously at and/or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HSS's obligation to provide Ms. Membreno de Ayala and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, HSS knew or should have known that as a result of its policies, Ms. Membreno de Ayala and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. HSS further knew or should have known that it did not pay Ms. Membreno de Ayala and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HSS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Membreno de Ayala and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HSS did pay other aggrieved employees for missed, late, and interrupted meal periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, HSS regularly failed to authorize and permit Ms. Membreno de Ayala and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HSS's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Membreno de Ayala and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HSS also failed to schedule rest periods, which, coupled with HSS's failure to provide adequate rest period coverage, further led to Ms. Membreno de Ayala and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HSS maintained a company-wide on-premises rest period policy, which mandated that Ms. Membreno de Ayala and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Membreno de Ayala and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, HSS effectively maintained control over Ms. Membreno de Ayala and other aggrieved employees during rest periods.

As a result of HSS's practices and policies, Ms. Membreno de Ayala 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 10-minute rest periods to which they were entitled. For example, Ms. Membreno de Ayala would have to forego their rest periods altogether approximately twice per week due to the heavy workload and lack of rest period coverage. When Ms. Membreno de Ayala was able to take her rest periods, they were often interrupted because she was required to discuss the status of completing her assigned guest rooms.

HSS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Membreno de Ayala and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HSS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HSS did not pay other aggrieved employees at the correct rate of pay for premiums because HSS 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, HSS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. HSS has not provided Ms. Membreno de Ayala 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, HSS has knowingly and intentionally provided Ms. Membreno de Ayala and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HSS issued uniform wage statements to Ms. Membreno de Ayala and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the

name and address of the legal entity that is the employer; 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, HSS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because HSS did not record the time Ms. Membreno de Ayala and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HSS did not list the correct amount of gross wages and net wages earned by Ms. Membreno de Ayala and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HSS failed to accurately list the total number of hours worked by Ms. Membreno de Ayala 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 HSS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HSS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HSS failed to list the correct amount of net wages in violation of section 226(a)(5). HSS 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).

Third, and separately from these violations, HSS issued uniform wage statements to Ms. Membreno de Ayala and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, HSS systematically, and on a company-wide basis, issued wage statements to Ms. Membreno de Ayala and other aggrieved employees that fail to list the employing entity's name and address.

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; and/or failing to state all hours worked as a result of not recording or stating the 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. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HSS willfully failed to maintain accurate payroll records for Ms. Membreno de Ayala 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, HSS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Membreno de Ayala and other aggrieved employees, in violation of section 1198. Also, in light of HSS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, HSS kept no records of meal start and end times for second meal periods.

Because HSS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Membreno de Ayala 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, Ms. Membreno de Ayala 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.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201.3 and 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.

At all relevant times herein, California Labor Code section 201.3 requires that if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

During the relevant time period, HSS willfully failed to pay Ms. Membreno de Ayala and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages,

meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code sections 201.3 and/or 204.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 201.3, and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 201.3, 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.

During the relevant time period, on information and belief, HSS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HSS terminated Ms. Membreno de Ayala on or about August 28, 2022. However, HSS did not provide her with her final paycheck until one (1) week later. Thus, HSS failed to pay Ms. Membreno de Ayala her final wages immediately, in violation of Labor Code section 201 and/or 201.3.

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

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, HSS unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, HSS systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under HSS's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay out-of-network ATM withdrawal fees, cash back fees from purchase transactions, ATM balance inquiry or decline fees, inactivity fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

HSS's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, HSS willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. HSS's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, HSS acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, HSS paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

HSS's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11050(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HSS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because HSS failed to pay Ms. Membreno de Ayala and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

HSS had a company-wide practice of sending Ms. Membreno de Ayala and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, HSS's managers sent Ms. Membreno de Ayala home within three (3) hours from the start of her shift because business was slow, but she was only paid for the time she had worked. Although Ms. Membreno de Ayala and other aggrieved employees would report to work based on the schedule that HSS provided to them, HSS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Membreno de Ayala and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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. 5-2001, 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."

During the relevant time period, HSS, on a company-wide basis, required that Ms. Membreno de Ayala and other aggrieved employees use their own 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 expenses. Specifically, Ms. Membreno de Ayala used her personal cellular phone to communicate with managers regarding the status of cleaning her assigned guest suites and other work-related tasks, and was further required to watch training videos on proper cleaning techniques on her personal cellular phone. Although HSS required Ms. Membreno de Ayala and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HSS failed to reimburse them for this cost.

HSS could have provided Ms. Membreno de Ayala and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, HSS could have reimbursed employees for the costs of their mobile device usage. Instead, HSS passed these operating costs off onto Ms. Membreno de Ayala and other aggrieved employees. At all relevant times, Ms. Membreno de Ayala did not earn at least two (2) times the minimum wage.

Thus, HSS 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. Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.

HSS failed to provide Ms. Membreno de Ayala 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). HSS’s failure to provide Ms. Membreno de Ayala and other aggrieved employees with written notice of basic information regarding their employment with HSS is in violation of Labor Code section 2810.5.

Ms. Membreno de Ayala and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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.” HSS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Membreno de Ayala’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Membreno de Ayala seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Membreno de Ayala, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against HSS for violations of California Labor Code sections 201, 201.3, 202, 204, 221, 223, 224, 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, Ms. Membreno de Ayala seeks all applicable civil 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:

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

Best Regards,


Anthony Castillo

Copy: HOSPITALITY STAFFING SOLUTIONS, LLC (via U.S. Certified Mail); KELLERMEYER BERGENSONS SERVICES, LLC (via U.S. Certified Mail)

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

CERTIFIED MAIL



7022 2410 0000 2405 7873

HOSPITALITY STAFFING
SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

HOSPITALITY STAFFING
SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

9590 9402 7690 2122 7158 11



2. Article Number (Transfer from service label)

7022 2410 0000 2405 7873

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

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

- Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Mail Restricted Delivery
 - ☐ Priority Mail Express
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
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For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

PSN 7530-02-000-9053

1. Item Description & Fee (Print last and fee in separate box)
☒ Return Receipt (hardcopy) \$ ☐ Return Receipt (electronic) \$ ☐ Signature Confirmation \$ ☐ Signature Confirmation Restricted Delivery \$ ☐ Collect on Delivery \$ ☐ Collect on Delivery Restricted Delivery \$

HOSPITALITY STAFFING
SOLUTIONS, LLC
100 GLENRIDGE POINT PKWY
STE 400
ATLANTA, GA 30342

7022 2410 0000 2405 7873

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



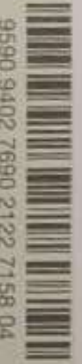
7022 2410 0000 2405 7866

KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

KELLERMEYER BERGENSONS
SERVICES, LLC
3605 OCEAN RANCH BOULEVARD,
SUITE 200
OCEANSIDE, CA 92056



9590 9402 7690 2122 7158 04

2. Article Number (Transfer from service label)

7022 2410 0000 2405 7866

PS Form 3811, July 2020 PSN 7530-02-000-9003

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Official Use Only

PSN 7530-02-000-9003

U.S. Services & Fees (Items 1-5, and 10-12 are required)

Signature Required (Printed Name) \$

Signature Required (Restricted) \$

Signature Required (Restricted) \$

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Exhibit 2

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over five hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$16.5 million on behalf of a California class in *Navarro v. United Parcel Service, Inc.*, BC592098 (Los Angeles Super. Ct.), \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019). Capstone was also lead counsel in *Vargas v. Ford Motor Co.*, No. 12-08388-AB, 2020 WL 1164066 (C.D. Cal. Mar. 5, 2020), which delivered over \$100 million to the Class.

SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 500 high-stakes class and representative actions totaling well over \$500 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program that will pay out more than \$100 million to class members;
- *Navarro et al v. United Parcel Service, Inc.*, No. BC592098 (Los Angeles Super. Ct.): gross settlement of \$16.5 million on behalf of approximately 180,000 non-exempt employees;
- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner and lead trial attorney at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions and PAGA cases. The author of

numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on numerous certified class actions currently on track for trial, representing over hundreds of thousands of California employees in pursuit of their wage and hour claims. She is also at the forefront in developing the law on the California Labor Code's Private Attorneys General Act (PAGA), including administrative exhaustion, the scope of discovery, manageability, and PAGA trial plans. Recently, Ms. Grant has taken two PAGA cases to trial and worked on several key PAGA appellate decisions, including *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531 (2017). Ms. Grant also represented the plaintiff in *Davidson v. Seterus, Inc.*, 21 Cal. App. 5th 283 (2018), which, in a case of first impression, found that the Defendant, a mortgage servicer, was a debt collector under California's Rosenthal Fair Debt Collection Practices Act. The case led to enactment of legislation that expressly includes "mortgage debt" within the Rosenthal Act's definition of "consumer credit" and amends the Rosenthal Act to expressly apply to debt collection activities involving residential mortgage loans.

Ms. Grant began her legal career as a law clerk for the Honorable Harry Pregerson, Justice, Ninth Circuit Court of Appeals. Thereafter, she was an associate with Sidley Austin LLP, where she represented Fortune 500 companies in commercial litigation and consumer class actions. Before joining Capstone, Ms. Grant was a Senior Associate with Quinn Emanuel Trial Attorneys, where she was on the trial team that prosecuted *Mattel v. Bratz (I)*, and a staff attorney in the Enforcement Division of the Securities and Exchange Commission, investigating ongoing violations of federal securities regulations and statutes. Ms. Grant graduated summa cum laude and first in her class from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review. She earned her undergraduate degree from Cornell University's College of Arts & Sciences, where she received the JFK Public Service Award and the Outstanding Senior Award (graduating class of 4,000 students). Ms. Grant has been a panelist and speaker on PAGA actions and wage-and-hour class actions at various annual and biannual California Bar Association, California Law Association, and Bridgeport Continuing Education conferences. Her published articles include: Los Angeles Lawyer: A PAGA Rollercoaster (September 2023), Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: Early Decisions on Commencement and Removal of Actions (2006).

Ms. Grant is a member of the Los Angeles County Women Lawyers Association of Los Angeles, the Consumer Attorneys Association of Los Angeles (CAALA), and the Consumer Attorneys of California. She was recently named a 2024 Worker Health & Safety Hero by Worksafe for her work in advancing workplace safety and justice. She also currently serves on the Los Angeles County Bar Association's President's Commission on Women in the Legal Profession, the Subcommittee on Gender Bias and Civility, and the Amicus Subcommittee, and is a member of the Executive Board of Los Angeles Lawyer magazine. Ms. Grant was recognized by the Daily Journal as a Top Employment & Labor Attorney in 2023 and has been selected as one of Southern California's "Super Lawyers" in 2022, 2023, and 2024.

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions

and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of “benefit of the bargain” damages models in consumer class actions. He also oversees the firm’s high-stakes fee disputes and settlement approval, with a highlight being his central role in achieving the highly publicized Ford transmission settlement, valued at over \$100 million.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He is a State Bar-certified Specialist in Appellate Law, and currently serves on the Committee for Appellate Courts for the California Lawyers Association (CLA) and the Los Angeles County Bar’s State Appellate Judicial Evaluation Committee. He is an editor of CLA’s monthly Litigation Update, and his work has been published by the California Litigation Review, California Labor & Employment Review, Daily Journal, and the Los Angeles Lawyer. He is a contributor to Continuing Education of the Bar (CEB) and is regularly invited to speak at professional conferences. He was named a Southern California Super Lawyer for 2023, 2024, 2025 and the 2024 Worker Health & Safety Hero by Worksafe for his work in advancing workplace safety and justice.

Robert Drexler. Robert Drexler is a partner with Capstone Law where he leads one of the firm’s litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California’s “Super Lawyers” in 2009 and every year from 2001 through 2024.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored Defective Prosthetic Devices: Strict Tort Liability for the Hospital? 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at The Ohio State University where he graduated *cum laude*. Mr. Drexler has been a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC’s Forum Magazine and The Daily Journal.

Jamie Greene. Jamie Greene is a partner with Capstone Law, where she leads the firm’s business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm’s client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury,

construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

Bevin Allen Pike. Bevin Allen Pike is a partner with Capstone Law, where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Senior Counsel

Theresa Carroll. Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter. Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Anthony Castillo. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and

business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Abigail Gertner. Abigail Gertner is a senior counsel with Capstone Law. Ms. Gertner pursues automotive defect and other consumer class action litigation, with a focus on defective products. Her efforts have contributed to the successful resolution of numerous cases, including *Weckwerth v. Nissan North America, Inc.*, No. 18-00588 (M.D. Tenn.) (providing a \$407 to \$547 million-dollar benefit to a class of nearly 3 million consumers); *Hickman v. Subaru of America, Inc.*, No. 21-02100 (D.N.J.) (providing reimbursements transmission repairs and warranty extensions to approximately 160,000 consumers); *Rieger v. Volkswagen Group of America, Inc.*, No. 21-10546 (D.N.J.) (providing reimbursements for engine repairs and warranty extensions to over 300,000 consumers); and *Gioffe v. Volkswagen Group of America, Inc.*, No. 22-00193 (D.N.J.) (providing 100% reimbursement for repairs or replacement of gateway control modules damaged by water intrusion).

Prior to joining Capstone Law, Ms. Gertner accumulated over two decades of litigation experience as a class action attorney, working in consumer protection, ERISA, healthcare, securities, and antitrust litigation at several nationally recognized law firms. During her time at Santa Clara University School of Law, she interned at the Santa Clara County District Attorney's Office in the Child and Elder Abuse unit. Prior to that, she graduated from Tulane University with a Bachelor of Science in Psychology and a Bachelor of Arts in Classical Studies.

Helga Hakimi. Helga Hakimi is a senior counsel at Capstone Law. Her practice primarily involves employment law class action litigation, namely wage-and-hour class actions and PAGA litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work, and related employer violations under the Fair Labor Standards Act and California Labor Code.

Prior to joining Capstone, Ms. Hakimi was a partner at a civil litigation firm in West Los Angeles, where she handled mainly real estate litigation, business litigation, and defense of some employment law matters; prior to that, she worked as a civil litigation attorney handling complex personal injury litigation. Ms. Hakimi's interest in advocating for employee rights began in law school, where she volunteered for the Workers' Rights Clinic and assisted low-income community members in Northern California's greater Bay Area region with employment-related legal issues. Upon graduating from law school, Ms. Hakimi worked as an associate for a municipal law firm, and thereafter at the local City Attorney's Office, where she advised municipalities and cities in civil matters involving land use, environmental law, development issues, Constitutional law, and First Amendment rights. Ms. Hakimi graduated from Berkeley Law (Boalt Hall School of Law), where she earned her Juris Doctorate and was awarded the Prosser Award in Remedies. Ms. Hakimi received her Bachelor of Arts degree in Political Science with a minor in Education Studies from the University of California, Los Angeles, and graduated summa cum laude and with Departmental Highest Honors.

Majdi Hijazin. Majdi Hijazin is a senior counsel at Capstone Law. His practice primarily focuses on representing consumers in complex litigation matters. Currently, Mr. Hijazin prosecutes automotive defect and other consumer class action lawsuits throughout the United States. Prior to joining Capstone, Mr. Hijazin

led a national team of six attorneys in bringing claims under the Illinois Biometric Information Privacy Act (BIPA), where he and his team routinely obtained high-value settlements for their clients.

Mr. Hijazin has prosecuted many individual and class action lawsuits under the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Telephone Consumer Protection Act (TCPA), and the Illinois Consumer Fraud Act (ICFA). On behalf of aggrieved homeowners, Mr. Hijazin was part of a trial team where his efforts were instrumental in securing two multi-million-dollar jury verdicts. See *Hammer v. Residential Credit Solutions, Inc.*, No. 13 C 6397 (N.D. Ill. Dec. 3, 2015), and *Saccameno v. Ocwen Loan Servicing, LLC*, 372 F. Supp. 3d 609 (N.D. Ill. 2019). Most recently, in late 2023, Mr. Hijazin's work was vital in securing a seven-digit settlement on the third day of trial. Mr. Hijazin graduated from the University of Illinois Chicago School of Law.

Daniel Jonathan. Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

Jonathan Lee. A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Trisha Monesi. Trisha Monesi is a senior counsel at Capstone Law. Her practice focuses on wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to practicing wage-and-hour class actions and PAGA litigation, Ms. Monesi prosecuted consumer class actions in state and federal court, focusing on automotive and consumer product defects, data breaches, and false advertising. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations.

Robert Myong. Robert Myong is a senior counsel at Capstone Law. His practice focuses on helping employees recover their unpaid wages, overtime, and penalties in class actions and PAGA representative actions in state and federal court.

Prior to joining Capstone, Mr. Myong managed a team of attorneys that recovered millions of dollars on behalf of employees for their unpaid wages, discrimination, harassment, retaliation, and wrongful termination claims. Robert is a graduate of Whittier Law School and earned his bachelor's degree in economics from the University of Southern California.

Cody Padgett. Cody Padgett is a senior counsel with Capstone Law. Mr. Padgett prosecutes automotive defect and other consumer class action lawsuits during all stages of litigation. His work has been integral to achieving contested class certification in several automotive defect cases, including *Falco v. Nissan N. Am. Inc.*, No. 13-00686 (C.D. Cal.) (certifying a class of owners/lessees of Nissan vehicles), *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-08629 (C.D. Cal.) (certifying a class of owners/lessees of Toyota vehicles), and *Victorino v. FCA US, LLC*, No. 16-01617 (S.D. Cal.) (certifying a class of owners/lessees of Dodge Dart vehicles). Mr. Padgett's efforts have also contributed to major settlements of automotive defect and consumer cases, providing substantial monetary relief to millions of class members, valued in the hundreds of millions of dollars. See, e.g., *Weckwerth v. Nissan North America, Inc.*, No. 18-00588 (M.D. Tenn.) (providing a \$407 to \$547 million-dollar benefit to a class of nearly 3 million consumers).

Prior to joining Capstone Law, Mr. Padgett assisted with the defense of major felony cases at the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*. Mr. Padgett is admitted to practice in California, before the Ninth Circuit Court of Appeals, and before United States District Court for the Northern, Eastern, Central, and Southern Districts of California.

Shahin Rezvani. Shahin Rezvani is a senior counsel with Capstone Law. His practice involves litigating consumer class action lawsuits. Mr. Rezvani has significant experience in high-stakes trials. He played a pivotal role in the *Freedom Wireless v. Boston Communications* five-month patent infringement jury trial, securing a then-monumental \$128 million verdict. Equally significant was his role in the *Rambus v. Micron* antitrust jury trial, defeating a \$4 billion claim, and the *Micron v. Rambus* spoliation trial resulting in Rambus's SDRAM and DDR SDRAM patents being rendered unenforceable. Mr. Rezvani's impact extends beyond big cases as well, including securing a favorable verdict for an executive in the entertainment industry and successfully defending against claims for breach of contract and fraud in the electronics sector. He has also obtained judgments as a matter of law on post-trial motions and secured summary judgments, such as a victory in an early cybersquatting suit for the Academy of Motion Picture Arts and Sciences.

Prior to Capstone, Mr. Rezvani was a senior attorney at a plaintiff's class action firm, where he handled wage & hour, consumer fraud, data breach, and other class actions. While there, he helped achieve the second largest settlement in the nation for an ADA class action case against Hyatt Corporation. With over two decades of legal expertise in antitrust, class action, consumer fraud, copyright, employment, patent, securities, and trademark disputes, his skills and accomplishments span a wide range of practice areas. Mr. Rezvani has previously represented both plaintiffs and defendants in antitrust, ERISA, employment and other matters. Mr. Rezvani graduated from UC Berkeley School of Law, and earned his Bachelor of Arts from University of California, Los Angeles.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Roxanna Tabatabaeeepour. Roxanna Tabatabaeeepour is a senior counsel with Capstone Law. Her practice primarily involves representing employees in class actions and representative actions for various violations of the California Labor Code.

Before joining Capstone, Ms. Tabatabaeeepour's experience included representing workers in single-plaintiff and class/representative action lawsuits regarding wage-and-hour violations, as well as individual claims for discrimination, retaliation, failure to accommodate, harassment, and wrongful termination, under both

California and federal laws. Ms. Tabatabaepour received her undergraduate degrees from the University of California San Diego. She subsequently graduated from the American University, Washington College of Law, where she was a Marshall-Brennan Constitutional Literacy Fellow and taught Constitutional Literacy to teens in marginalized communities.

Ryan Tish. Ryan Tish is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and Private Attorneys General Act (“PAGA”) representative actions on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenses, and other claims under the Fair Labor Standards Act and California Labor Code.

Before joining Capstone, Mr. Tish was an associate at a civil litigation firm in Los Angeles, handling a variety of matters, including commercial contracts, real estate, and employment law. Mr. Tish has represented both employers and employees in actions ranging from individual claims of discrimination, harassment, retaliation, and wrongful termination, to class and representative actions for wage-and-hour and privacy law violations. Mr. Tish is a graduate of the University of Southern California Gould School of Law and earned his bachelor’s degree in civil and environmental engineering from the University of California, Los Angeles. Mr. Tish is admitted to practice law in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor’s degree in International Business from the University of Southern California.

Associates

Tyler Anderson. Tyler Anderson is an associate with Capstone Law. His practice focuses on complex motions, writs, and appeals. Before joining Capstone, Mr. Anderson was Co-Director of the Los Angeles Center for Community Law and Action (“LACCLA”), a nonprofit law firm that represents tenant unions and union organizers. While there, Mr. Anderson tried a disparate impact federal Fair Housing Act case that resulted in a jury verdict of over \$1,000,000. He also frequently used California Anti-SLAPP laws to block attempts to silence tenant union organizers. Prior to working at LACCLA, Mr. Anderson clerked for the Honorable Martha Vazquez, a federal district court judge for the District of New Mexico who, at the time, sat on the Executive Committee of the Federal Judiciary. Before that, Mr. Anderson was a litigation associate at the international law firm Jenner & Block LLP. Mr. Anderson graduated from Harvard Law School, where he was the Executive Articles Editor of the Harvard Journal on Legislation as well as President of one of the largest student-run pro bono organizations at Harvard University, Project No One Leaves. He graduated with several “Dean’s Scholar” prizes for receiving top grades in his constitutional law courses.

Afife Bicakci. Afife Bicakci is an associate with Capstone Law. Her practice focuses on prosecuting wage-and-hour class actions and representative actions under the Private Attorneys General Act (“PAGA”) on behalf of employees. Before joining Capstone, she also represented employees in actions brought under the Fair Employment and Housing Act (“FEHA”) involving discrimination, harassment, and retaliation claims. Earlier in her career, in Turkey, she litigated employment disputes from the defense side. Ms. Bicakci earned her Bachelor of Laws (J.D. equivalent) from Baskent University in Ankara, Turkey, and her LL.M. from Lincoln Law School of San Jose.

Sairah Budhwani. Sairah Budhwani is an associate with Capstone Law. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Previously, Ms. Budhwani litigated employment discrimination, harassment, and retaliation claims, and also represented incarcerated individuals contesting the conditions of their confinement. Ms. Budhwani graduated from UCLA School of Law in 2019 and received an undergraduate degree in Urban Studies from University of California, Irvine in 2012. Ms. Budhwani is admitted to practice law in California. She is fluent in Urdu.

Richard J. Hogan. Richard J. Hogan is an associate with Capstone Law. Mr. Hogan represents employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Hogan focuses on matters proceeding to trial, arbitration, and mediation. Over the course of his career, Mr. Hogan has argued over 40 combined jury and bench trials in the criminal, family, and general civil law arenas. Prior to joining Capstone, Mr. Hogan advocated for clients in a wide range of cases including complex product liability, professional negligence, and homicide. Mr. Hogan graduated from University of California, Hastings College of the Law, where he was an editor on the Hastings Business Law Journal.

Jeffrey “Jeff” Jimenez. Jeffrey “Jeff” Jimenez is an associate with Capstone. His practice focuses on prosecuting wage-and-hour class actions and Private Attorneys General Act (“PAGA”) representative actions on behalf of employees. Before joining Capstone, Mr. Jimenez was an associate at a plaintiff’s law firm where he represented employees in class and PAGA actions, and Fair Employment Housing Act (“FEHA”) actions for discrimination, harassment, and retaliation claims. Mr. Jimenez graduated from Southwestern School of Law. He obtained his undergraduate degree from the University of California, Irvine, where he majored in History. Prior to transitioning to law, Mr. Jimenez worked as a special education teacher in southern California.

Ninel Kocharyan. Ninel Kocharyan is an associate with Capstone. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violation of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Ms. Kocharyan began her career in entertainment law reviewing, drafting, and negotiating contracts for talent and ensuring FTC compliance. She immigrated to the United States from Russia at the age of 15 with a passion to pursue a career in law. Ms. Kocharyan graduated from Thomas Jefferson School of Law in 2014 and received her undergraduate degree from University of California, Los Angeles where she majored in Political Science. Ms. Kocharyan is admitted to practice law in California.

Chase Laurent. Chase Laurent is an associate with Capstone Law. His practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violation of overtime and minimum wage law, meal and rest period requirements, off-the-clock work violations, and unpaid business expenses. Previously, he litigated individual employment actions on behalf of plaintiffs, including discrimination, harassment, retaliation, wrongful termination, and wage-and-hour claims. Mr. Laurent graduated from



University of San Francisco School of Law, where he served as the Technical Editor for the USF Law Review and twice competed on the USF Moot Court Competition Team. He earned his undergraduate degree at California Polytechnic State University, San Luis Obispo, where he majored in Psychology, with a double-minor in Child Development and Law & Society.

Alexander Lima. Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. Mr. Lima graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

Kathy Pham. Kathy Pham is an associate at Capstone Law. Her practice primarily focuses on representing consumers in automotive defect litigation matters. Before joining Capstone, Ms. Pham represented consumers in automotive fraud and automotive defect cases, helping individuals obtain favorable outcomes under the Consumers Legal Remedies Act and Song-Beverly Consumer Warranty Act. Ms. Pham graduated from California Western School of Law in 2019 with a focus in International Law.

Alexander Wallin. Alexander Wallin is an associate at Capstone Law. He is a passionate litigator who has successfully represented employees against corporate injustice. Mr. Wallin has recovered millions of dollars in numerous wage-and-hour class actions, PAGA actions, and individual discrimination lawsuits. He has a particular interest in representing economically disadvantaged employees who cannot afford legal representation on a retainer-fee basis. Mr. Wallin is a member of the Los Angeles County Bar Association's Employment Law Section and stays up-to-date with the rapidly evolving areas of wage-and-hour protections. He graduated from Loyola Law School in 2017 and is admitted to practice law in California, as well as before the United States District Court for Central and Northern Districts of California. He has been selected as a Southern California "Super Lawyers – Rising Star" in 2022 and 2023.