

September 3, 2024

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

PENDRY SAN DIEGO, LLC

PENDRY HOTELS, LLC

c/o C T Corporation System

330 N Brand Blvd, Ste 700

Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 1756 9920 42

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This notice is being sent in compliance with Cal. Lab. Code § 2699.3. Our offices represent Plaintiffs NICOLE BURT ("Plaintiff Burt"), and IVAN MARTINEZ ("Plaintiff Martinez") (collectively "PLAINTIFFS") and other aggrieved employees. Plaintiffs are currently employed by Defendant PENDRY SAN DIEGO, LLC ("Defendant Pendry"), and/or Defendant PENDRY HOTELS, LLC ("Defendant Pendry Hotels") (collectively, hereinafter, "Defendants") in California as non-exempt employees, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks.

Defendant Pendry, and/or Defendant Pendry Hotels are the joint employers of Plaintiffs as evidenced by the documents issued to Plaintiffs and by the company Plaintiffs performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as "DEFENDANTS" and/or "DEFENDANT."

Plaintiffs allege that within the past year, they personally suffered violations of the following Labor Code Sections as a result of Defendants' failure to pay Plaintiffs for all time worked, provide Plaintiffs with compliant meal periods, provide Plaintiffs with compliant rest periods, provide Plaintiffs with accurate itemized wage statements that facially comply with the requirements provided forth in Labor Code Section 226, furnish wages to Plaintiffs with the frequency as set forth under Labor Code Section 204, failure to provide Plaintiffs with all gratuities owed and reimburse Plaintiffs for necessary business expenses: Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804. These violations are actionable under California Labor Code section 2699.3.

The information below provides notice to the Labor and Workforce Development Agency of the

facts and theories supporting the alleged violations for the agency's reference. If the agency needs any further information, please do not hesitate to ask.

Plaintiffs seeks to represent a group of aggrieved employees defined as any person currently or formerly employed by Defendant PENDRY SAN DIEGO, LLC and/or Defendant PENDRY HOTELS, LLC who performed work in California and against whom one or more of the alleged violations listed above were committed during the relevant claim period ("Aggrieved Employees"). Plaintiffs believe this group to be comprised of all current and former non-exempt employees who performed work for Defendant PENDRY SAN DIEGO, LLC and/or Defendant PENDRY HOTELS, LLC in California during the period beginning one year prior to the date of this Notice and continuing through the present.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate Plaintiffs and other Aggrieved Employees for missed meal and rest periods, failed to pay Plaintiffs and other Aggrieved Employees for all time worked, failed compensate Plaintiffs and other Aggrieved Employees for off-the-clock work, failed to pay Plaintiffs and other Aggrieved Employees overtime at the correct regular rate of pay, failed to compensate Plaintiffs and other Aggrieved Employees meal and rest premiums at the regular rate of pay, failed to pay Plaintiffs and other Aggrieved Employees redeemed sick pay at the regular rate of pay, failed to reimburse Plaintiffs and other Aggrieved Employees for business expenses, failed to provide Plaintiffs with all gratuities owed, and failed to issue to Plaintiffs and other Aggrieved Employees accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. Defendants' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows Defendants to illegally profit and gain an unfair advantage over competitors who comply with the law.

Meal Period Violations: Pursuant to the Industrial Welfare Commission Wage Orders, Defendants were required to pay Plaintiffs and the Aggrieved Employees for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the last year, Defendants required Plaintiffs and other Aggrieved Employees to work without paying them for all the time they were under Defendants' control. Specifically, Defendants required Plaintiffs to work while clocked out during what was supposed to be Plaintiffs' off-duty meal break. Indeed, there were many days where Plaintiffs did not even receive a partial lunch. As a result, Plaintiffs and other Aggrieved Employees forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. Defendants' uniform policy and practice not to pay Plaintiffs and other Aggrieved Employees for all time worked is evidenced by Defendants' business records.

During the last year, as a result of their rigorous work schedules and Defendants' inadequate staffing practices, Plaintiffs and other Aggrieved Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. Plaintiffs and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during some shifts without receiving a meal break. Further, Defendants failed to provide Plaintiffs and other Aggrieved Employees with a second off-duty meal period for some workdays in which these employees were required by Defendants to work

ten (10) hours of work. The nature of the work performed by Plaintiffs and other Aggrieved Employees does not qualify for the limited and narrowly construed “on-duty” meal period exception. When they were provided with meal periods, Plaintiffs and other Aggrieved Employees were, from time to time, required to remain on duty and on call. Defendants’ failure to provide Plaintiffs and other Aggrieved Employees with legally required meal breaks is evidenced by Defendants’ business records. As a result of their rigorous work schedules and Defendants’ inadequate staffing, Plaintiffs and other Aggrieved Employees therefore forfeited meal breaks without additional compensation and in accordance with Defendants’ strict corporate policy and practice.

Rest Period Violations: From time to time during the past year, Plaintiffs and other Aggrieved Employees were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and Defendants’ inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, Plaintiffs and other Aggrieved Employees were, from time to time, required to remain on premises, on duty and/or on call, and not fully relieved of all duties. Plaintiffs and other Aggrieved Employees were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and Defendants’ inadequate staffing, Plaintiffs and other Aggrieved Employees were from time to time denied their proper rest periods by Defendants and Defendants’ managers.

Unreimbursed Business Expenses: Defendants as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the Plaintiffs and other Aggrieved Employees for required business expenses incurred by the Plaintiffs and other Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendants. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Within the last year, in the course of their employment, Defendants required Plaintiffs and other Aggrieved Employees to incur personal expenses for the purchase and maintenance of their work uniforms as a result of and in furtherance of their job duties. Specifically, Plaintiffs and other Aggrieved Employees were required to incur personal expenses for the purchase and maintenance of their work uniforms in order to perform work related tasks. Additionally, Plaintiffs and Aggrieved Employees incurred personal expenses for the use of their personal cell phones as a result of and in furtherance of their job duties. Specifically, Plaintiffs and Aggrieved Employees were required to communicate with their supervisors via their cell phones. However, Defendants unlawfully failed to reimburse Plaintiff and other Aggrieved Employees for the personal expenses incurred for the purchase and maintenance of their work uniforms and the use of their personal cell phones. As a result, in the course of their employment with Defendants, the Plaintiffs and other Aggrieved Employees incurred unreimbursed business expenses that included, but were not limited to, costs related to the personal expenses incurred for the purchase and maintenance of their work uniforms and the use of their cell phones, all on behalf of and for the benefit of

Defendants.

Wage Statement Violations: California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. From time to time during the last year, when Plaintiff and other Aggrieved Employees missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Defendants also failed to provide Plaintiffs and other Aggrieved Employees with complete and accurate wage statements that included all required elements listed above. Additionally, as a result of Defendants failure to pay Plaintiffs and Aggrieved Employees for all gratuities earned, Defendants failed to accurately record Plaintiffs and Aggrieved Employees gross wages earned. As a result, Defendants issued Plaintiffs and other Aggrieved Employees with wage statements that violate Cal. Lab. Code § 226. Further, Defendants' violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations: During the last year, from time-to-time, Defendants failed and continue to fail to accurately pay Plaintiffs and other Aggrieved Employees for all hours worked. During the last year, from time-to-time Defendants required Plaintiffs and other Aggrieved Employees to perform pre-shift or post-shift work. This resulted Plaintiffs and other Aggrieved Employees to work while off-the-clock. Defendants directly benefited from the undercompensated off-the-clock work performed by Plaintiffs and other Aggrieved Employees. Defendants controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of Plaintiffs and other Aggrieved Employees.

Defendants were able to track the amount of time Plaintiffs and other Aggrieved Employees spent working; however, Defendants failed to document, track, or pay Plaintiffs and other Aggrieved Employees all wages earned and owed for all the work they performed. Plaintiffs and other Aggrieved Employees were non-exempt employees, subject to the requirements of the California Labor Code. Defendants' policies and practices deprived Plaintiffs and other Aggrieved Employees of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because Plaintiffs and other Aggrieved Employees typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, Defendants' policies and practices also deprived them of overtime pay.

Defendants knew or should have known that Plaintiffs' and other Aggrieved Employees' off-the-clock work was compensable under the law. As a result, Plaintiffs and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, undergoing pre-shift and post-shift work. Defendants' uniform policy and practice to not pay Plaintiffs and other Aggrieved

Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay: From time to time during the last year, Defendants failed and continue to fail to accurately calculate and pay Plaintiffs and other Aggrieved Employees for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, Plaintiffs and other Aggrieved Employees forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. Defendants' uniform policy and practice not to pay Plaintiffs and other Aggrieved Employees at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by Defendants' business records.

State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." Plaintiffs and other Aggrieved Employees were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance. The second component of Plaintiffs' and other Aggrieved Employees' compensation was Defendants' non-discretionary incentive program that paid Plaintiffs and other Aggrieved Employees incentive wages based on their performance for Defendants. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by Defendants. However, from time to time, when calculating the regular rate of pay in those pay periods where Plaintiffs and other Aggrieved Employees worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, Defendants failed to accurately include the non-discretionary bonus compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiffs and other Aggrieved Employees must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and redeemed sick pay to Plaintiffs and other Aggrieved Employees by Defendants.

Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Defendants' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate Plaintiffs and other Aggrieved Employees at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed Defendants to illegally profit and gain an unfair advantage over competitors who complied with the law.

Unlawful Deductions: During the last year, Defendants, from time-to-time, unlawfully deducted wages from Plaintiffs and Aggrieved Employees' pay without explanations and without authorization to do so or notice to Plaintiffs and the Aggrieved Employees. As a result, Defendants violated Labor Code § 221.

Timekeeping Manipulation: During the last year, Defendants, from time-to-time, did not have an immutable timekeeping system to accurately record and pay Plaintiffs and other Aggrieved Employees for the actual time Plaintiffs and other Aggrieved Employees worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, Defendants were able to and did in fact, unlawfully, and unilaterally alter the time recorded in Defendants' timekeeping system for Plaintiffs and other Aggrieved Employees in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks. As a result, Plaintiffs and other Aggrieved Employees, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

The mutability of the timekeeping system also allowed Defendants to alter employee time records by recording fictitious thirty (30) minute meal breaks in Defendants' timekeeping system so as to create the appearance that Plaintiffs and other Aggrieved Employees clocked out for thirty (30) minute meal breaks when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of Defendants' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks. As a result, Plaintiffs and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control and benefit for the time the timekeeping system was inoperable. Defendants' uniform policy and practice to not pay Plaintiffs and the Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Unlawful Rounding Practices: During the last year, Defendants did not have in place an immutable timekeeping system to accurately record and pay Plaintiffs and other Aggrieved Employees for the actual time these employees worked each day, including overtime hours. Specifically, Defendants had in place an unlawful rounding policy and practice that resulted in Plaintiffs and the Aggrieved Employees being undercompensated for all of their time worked. As a result, Defendants were able to and did in fact unlawfully, and unilaterally round the time recorded in Defendants' timekeeping system for Plaintiffs and the Aggrieved Employees in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, Plaintiffs and other Aggrieved Employees, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

Further, the mutability of Defendants' timekeeping system and unlawful rounding policy and practice resulted in Plaintiffs' and the Aggrieved Employees' time being inaccurately recorded. As a result, from time to time, Defendants' unlawful rounding policy and practice caused Plaintiffs and other Aggrieved Employees to perform work as ordered by Defendants for more than five (5) hours during a shift without receiving an off-duty meal break.

Untimely Payment of Wages: Pursuant to California Labor Code section 204, Plaintiffs and the Aggrieved Employees were entitled to timely payment of wages during their employment. Plaintiffs and the Aggrieved Employees, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and

rest period premium wages within permissible time period. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Plaintiffs and the Aggrieved Employees were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. To date, Defendants have not fully paid Plaintiffs the minimum, overtime and double time compensation still owed to them, or any penalty wages owed to them under Cal. Lab. Code § 203.

Sick Pay Violations: Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, including within the last year, Defendants failed to have a policy or practice in place that provided Plaintiffs and other Aggrieved Employees with sick days and/or paid sick leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, including within the last year, Defendants violated Cal. Lab. Code § 246 by failing to furnish Plaintiffs and other Aggrieved Employees with wage statements setting forth the amount of paid sick leave available.

Tip Pooling: California Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term “gratuity” as including any money that has been paid or given or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities they receive, directly or indirectly. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”

Pursuant to Defendants company policies and practices, Plaintiffs and other Aggrieved Employees were forced to forfeit gratuities left for them by customers to Defendants agents who provided no service to the customers that resulted in the gratuity. Defendants routinely added service charges to its food and beverage bills, which upon information and belief, served as gratuities for the service staff. “Thus, depending upon how one chooses to read [labor code] section 350 a mandatory service charge could be seen as either a sum paid by the customer ‘over and above the actual amount due...for food [and] drink...sold...to the patron.’” *O’Grady v. Merchant Exchange Productions, Inc.*, (2019) 41 Cal.App.5th 771, 780 (citing California Labor Code § 350(e)). It is typical and customary in the hospitality industry that establishments impose gratuity and/or service charges on the food and beverage bill. Thus, when customers paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and beverage industry that gratuities are paid for food and beverage service, customers paid these charges reasonably believing they were remitted to the service staff. However, Defendants have not remitted the total proceeds of these gratuities to the non-managerial employees who serve the food and beverages. Instead, Defendants have a policy and practice of using a portion of these gratuities to pay

managers or other non-service employees. As a result, Plaintiffs and Aggrieved Employees have not received the total proceeds of the gratuities, to which they are entitled under California law.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continue their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided in compliance with California Labor Code section 2695, *et seq.*

If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish extending to the right.

Jean-Claude Lapuyade, Esq.
Attorney at Law