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14 **Attorneys for Plaintiffs**  
15 **Jaime Hernandez and Isidro Ordaz**  
16 **on Behalf of All Aggrieved Employees**

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF ORANGE**

19 JAIME HERNANDEZ; ISIDRO ORDAZ, on  
20 behalf of all aggrieved employees,

21 Plaintiff,

22 vs.

23 SANTA ANA COUNTRY CLUB., a  
24 California Non-Profit Corporation; and DOES  
25 1 through 100, inclusive,

26 Defendants.

**CASE NO.: 30-2023-01335144-CU-WT-CXC**

*Assigned for all purposes to  
Hon. Judge Lon Hurwitz Dept. CX103*

**FIRST AMENDED COMPLAINT FOR  
VIOLATION OF THE CALIFORNIA  
PRIVATE ATTORNEYS GENERAL ACT,  
LABOR CODE SECTION 2698, et seq.  
("PAGA")**

**[UNLIMITED CIVIL]**

**[JURY TRIAL DEMANDED]**

1  
2 Plaintiffs Jaime Hernandez and Isidro Ordaz (hereinafter “Plaintiffs”), in a representative  
3 capacity on behalf of all aggrieved employees, allege and state as follows:

4 **JURISDICTION AND VENUE**

5 1. This action is brought pursuant to the California Private Attorneys General Act, -  
6 Cal. Labor Code sections 2698, et seq. The penalties and other remedies sought by Plaintiffs  
7 exceeds the minimal jurisdiction limits of the Superior Court and will be established according to  
8 proof at trial. The amount in controversy for Plaintiff, including claims for compensatory damages  
9 and attorneys’ fees is less than \$75,000.00. It is believed that the total sum owed to the Aggrieved  
10 Employees (“Aggrieved Employees” is defined for all purposes herein as all non-exempt  
11 employees of Defendant Santa Ana Country Club (“Defendant”) alleged herein is less than  
12 \$5,000,000.00, based upon the anticipated size of the Aggrieved Employees and the amount in  
13 controversy for each member of the Aggrieved Employees.

14 2. This Court has jurisdiction over this action and the matters alleged herein pursuant  
15 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution.  
16 The statutes under which this action is brought do not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over Defendant, because, upon information and belief,  
18 Defendant is either a citizen of California, has sufficient minimum contacts in California, or  
19 otherwise intentionally avails itself of the California market so as to render the exercise of  
20 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial  
21 justice.

22 4. Venue is proper in this Court, because, upon information and belief, the named  
23 Defendant resides, transacts business, or has offices in this county, and the acts or omissions alleged  
24 herein took place in this county.

25 5. Plaintiff properly provided notice the California Labor and Workforce Development  
26 Agency (“LWDA”) by timely filing the substance of the claims below with the LWDA on or about  
27 May 1, 2023, and amending the notice on or about June 28, 2024. A true and correct copy of the  
28 original PAGA Notice provided to the LWDA and the Defendant is attached hereto as Exhibit A,

1 and a true and correct copy of the operative First Amended PAGA Notice provided to the LWDA  
2 and Defendant is attached hereto as Exhibit B.

3 **THE PARTIES**

4 6. At all times relevant herein, Plaintiff Jaime Hernandez was, and is, an individual  
5 residing in the City of Torrance, County of Los Angeles, State of California. During the relevant  
6 time period, Plaintiff Hernandez worked for Defendant as a non-exempt hourly employee.

7 7. At all times relevant herein, Plaintiff Isidro Ordaz was, and is, an individual residing  
8 in the City of Santa Ana, County of Orange, State of California. During the relevant time period,  
9 Plaintiff Ordaz worked for Defendant as a non-exempt hourly employee.

10 8. Plaintiff is informed and believes, and based thereon alleges, that at all times  
11 relevant herein, Defendant was, and is, a California Non-Profit Corporation located in Santa Ana,  
12 California.

13 9. Plaintiff is unaware of the true names and capacities of Defendants named herein as  
14 DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.  
15 Plaintiffs will amend this Complaint to allege such names and capacities when the same has been  
16 ascertained. Plaintiffs are informed and believes, and based thereon alleges, that each of the  
17 fictitiously named Defendants stated herein bears a legal responsibility to Plaintiffs similar to that  
18 of the named Defendant herein.

19 10. At all times mentioned herein, Defendants DOES 1 through 100, inclusive, were the  
20 agents, servants, and employees of their Co-Defendants, and in doing the things herein alleged were  
21 acting in the scope of their authority as such agents, servants, and employees, and with the  
22 permission and consent of their Co-Defendants.

23 11. Plaintiff hereby demands a trial by jury.

24 **FACTS COMMON TO ALL CAUSES OF ACTION**

25 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant owns  
26 and operates an exclusive members-only invitation-only private golf and country club in Santa Ana,  
27 California. Throughout the relevant time period, Defendant employed Plaintiff and other aggrieved  
28 workers throughout the State of California, including at its primary location at 20382 Newport

1 Blvd., Santa Ana, California 92707

2 13. Plaintiff Hernandez worked for Defendant as a non-exempt employee from April  
3 27, 2022 until his termination on January 5, 2023.

4 14. Plaintiff Ordaz is currently employed by Defendant as a non-exempt employee.

5 15. Plaintiffs are informed and believe, and based thereon allege, that at all times  
6 relevant to this action, Defendant implemented a series of willful, systematic, and deliberate  
7 policies and practices that suppressed operating costs at the expense of employee rights set forth  
8 under the California Labor Code and the Industrial Welfare Commission (hereinafter "IWC") Wage  
9 Orders.

10 16. Plaintiffs allege that Defendant committed the following violations during the  
11 relevant time period:

12 (a) **Failure to Include Non-Discretionary Compensation in Regular Rate of**  
13 **Pay:** Throughout the relevant time period, Plaintiffs and all other non-exempt employees of  
14 Defendant were eligible for and received various nonhourly, nondiscretionary forms of  
15 compensation that were not factored into the regular rate, causing an underpayment in overtime,  
16 double-time, meal/rest period premiums, and sick leave payouts. Throughout the relevant time  
17 period, Plaintiffs and all other non-exempt employees were eligible to receive a non-discretionary  
18 incentive bonus through Defendant's Safety Incentive Program. The Safety Incentive Program was  
19 a quarterly bonus plan that was paid out to the all non-exempt employees who worked in a  
20 department that remained "injury-free" for an entire quarter. Plaintiffs allege that Defendant  
21 improperly excluded the non-discretionary safety bonuses when calculating the regular rate of pay  
22 used for payment of overtime and doubletime wages. *See Alvarado v. Dart Container Corp. of*  
23 *California*, 4 Cal.5th 542 (2018). Plaintiffs allege derivative violations of Labor Code section 226  
24 and 201-203 based on Defendant's failure to properly calculate and pay overtime wages based on  
25 the correct regular rate of pay.

26 (b) **Failure to Authorize and Permit Rest Periods and Correctly Calculate**  
27 **Rest Period Premium Pay:** Plaintiffs and all other non-exempt employees who worked for  
28 Defendant during the relevant time period were not provided with legally-compliant rest periods

1 under California law. Plaintiff and all other non-exempt employees who worked for Defendant  
2 during the relevant time period were not authorized and permitted to take rest periods if their shifts  
3 did not last at least four (4) hours. This policy and practice resulted in the denial of rest periods for  
4 employees who earned such a break by working shifts that lasted at least three and one-half hours  
5 (3 ½) but less than four (4) hours. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004  
6 (2012). Plaintiffs also allege that Defendant generally did not pay rest period premium pay for all  
7 instances where a violation occurred and, on the rare occasion when Defendant did pay rest period  
8 premiums, Defendant improperly excluded the non-discretionary safety bonuses when  
9 calculating/paying meal and/or rest break premiums. *See Ferra v. Loews Hollywood Hotel, LLC*,  
10 11 Cal.5th 858 (2021). Plaintiffs allege derivative violations of Labor Code section 226 and 201-  
11 203 based on Defendant's failure to properly calculate and pay meal/rest break premiums. *See*  
12 *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022).

13 (c) **Failure to Provide Meal Periods and Correctly Calculate Meal Period**

14 **Premium Pay:** Plaintiffs and all other non-exempt employees who worked for Defendant during  
15 the relevant time period were not provided with legally-compliant meal periods under California  
16 law. Plaintiff and all other non-exempt employees who worked for Defendant during the relevant  
17 time period were subjected to multiple violations of their right to be provided with legally compliant  
18 meal periods. Specifically, Defendant implemented a meal period waiver policy and, in  
19 administering this policy on the incorrect assumption that it operated to waive all meal periods  
20 regardless of length, wrongfully denied meal periods to non-exempt employees who worked shifts  
21 that lasted more than six (6) hours. On the occasions when Defendant permitted its non-exempt  
22 employees to take meal periods, the employees were frequently instructed to take their meals at the  
23 end of their shifts to accommodate the demands of the customers. This resulted in non-exempt  
24 employees not receiving timely meal periods. Further, Defendant would provide food for  
25 employees, and in order to coerce them into taking a late meal period, would inform them that they  
26 could avail themselves of this food at the end of their shift. Alternatively, if Defendant provided  
27 food/meals for employees during the shift, the food/meals were provided late into an employee's  
28 shift, causing them to take a late meal period. Plaintiffs also allege that Defendant generally did

1 not pay meal period premium pay for all instances where a violation occurred and, on the rare  
2 occasion when Defendant did pay meal period premiums, Defendant improperly excluded the non-  
3 discretionary safety bonuses when calculating/paying meal and/or rest break premiums. *See Ferra*  
4 *v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021). Plaintiffs allege derivative violations of  
5 Labor Code section 226 and 201-203 based on Defendant’s failure to properly calculate and pay  
6 meal/rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022).

7 (d) **Failure to Properly Calculate Sick Pay:** As a result of Defendant’s failure  
8 to properly calculate Plaintiffs and aggrieved employees’ regular rate as described above, Plaintiffs  
9 and aggrieved employees were denied the full amount of accrued sick pay owing to them.

10 17. Plaintiff is informed and believes, and based thereon alleges that, during the  
11 relevant period, Defendant’s conduct resulted in systematic violations of California Labor Code  
12 sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198  
13 and the applicable industrial wage orders.

#### 14 **FIRST CAUSE OF ACTION**

#### 15 **(Violation of California Labor Code Section 2698, et seq. (PAGA) – Against all Defendants)**

16 18. Plaintiffs refer to and incorporate herein by reference all prior paragraphs as  
17 though fully set forth herein.

18 19. California Labor Code section 2698, et seq., the Private Attorneys General Act  
19 (“PAGA”), allows an aggrieved employee to bring suit against an employer for violations of most  
20 California Labor Code provisions, including, but not limited to, violations of California Labor  
21 Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and  
22 the applicable industrial wage orders. By virtue of Defendant’s numerous violations of the  
23 California Labor Code as against Plaintiff as described herein, Plaintiffs are aggrieved employees  
24 as defined in California Labor Code section 2698, et seq.

25 20. Defendant’s acts constitute an ongoing unlawful activity prohibited by the  
26 California Labor Code, and, therefore, these acts constitute violations of the PAGA.

27 21. On May 1, 2023, Plaintiffs provided notice of these violations pursuant to  
28 California Labor Code section 2699.3 and have specifically asked the LWDA if it intends to

1 investigate the alleged violations. On June 28, 2024, Plaintiff amended the notice to include  
2 subsequently-discovered violations. See Exhibit B attached hereto. Plaintiffs did not receive a  
3 response back from the LWDA within the time limits outlined in California Labor Code section  
4 2699.3 with notification that it intends to investigate the alleged violations, and thus, Plaintiffs are  
5 entitled to prosecute his PAGA claims under California Labor Code section 2699, et seq.

6 22. Defendant's conduct of violating the California Labor Code constitutes violations  
7 of the PAGA.

8 23. Therefore, Plaintiffs request penalties against Defendant under the provisions of  
9 PAGA section 2699(f).

10 24. The proper measure of damages and penalties under the PAGA encompasses all  
11 aggrieved employees, whether a party to this action or not. Further, this claim needs no  
12 certification to proceed with class-wide recovery. *See Arias v. Superior Court*, 46 Cal. 4th 969,  
13 970-975 (2009).

14 25. Further, as a direct and proximate result of the conduct of Defendant, as set forth  
15 above, Plaintiffs were forced to incur substantial attorney's fees and costs which are recoverable  
16 under California Labor Code Section 2699(g)(1).

17  
18 **PRAYER FOR RELIEF**

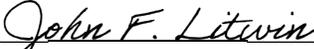
19 WHEREFORE, Plaintiffs pray for judgment against Defendant and DOES 1 through 100,  
20 inclusive, and each of them, jointly and severally, as follows:

- 21 1. That the Court impose penalties against Defendant on behalf of Plaintiffs and all  
22 aggrieved employees according to the Private Attorneys General Act ("PAGA");  
23 2. For reasonable attorneys' fees and for costs of suit incurred herein; and  
24 3. For such other and further relief as this Court may deem just, fair, and proper.

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DATED: October 17, 2024

Respectfully Submitted,  
BARKHORDARIAN LAW FIRM, PLC  
SHAH LAW GROUP, P.C.

  
\_\_\_\_\_  
John F. Litwin  
Sandeep J. Shah

Attorneys for Plaintiffs Jaime Hernandez  
and Isidro Ordaz on behalf of all aggrieved  
employees

# **EXHIBIT A**

**B**  
**BARKHORDARIAN**  
— L A W F I R M —

6047 Bristol Parkway  
Culver City, CA 90230  
t. 323.450.2777 f. 323.594.8227

May 1, 2023

VIA ELECTRONIC SUBMISSION  
VIA CERTIFIED MAIL TO OPPOSING PARTY

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

**Re: Jaime Hernandez, et al. v. Santa Ana Country Club**  
*PAGA Notice Pursuant to California Labor Code section 2699.3, et seq.*

Dear Sir/Madam:

This firm represents Jaime Hernandez and Isidro Ordaz (hereinafter “Plaintiffs”) and all other aggrieved employees who intend to file a claim against their employer Santa Ana Country Club (hereinafter “Defendant”) with regard to violations of the California Labor Code committed by Defendant. This letter shall serve as notice, and a request, pursuant to California Labor Code section 2699.3, et seq. (Private Attorneys General Act of 2004 (hereinafter “PAGA”)), that your agency investigate the alleged violations by Defendant described herein against Plaintiffs and other current and/or former non-exempt employees. If the agency does not intend to investigate the alleged violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

**Statement of Specific Provisions of the Labor Code Alleged to Have Been Violated**

The above-mentioned civil action will be brought by Plaintiffs against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and the applicable industrial wage orders.

**Facts and Theories in Support of Alleged Violations**

Defendant is a 121+ year old country club located at 20382 Newport Boulevard, Santa Ana, CA 92707. Plaintiff Hernandez worked for Defendant as a non-exempt employee from April 27, 2022 until his termination on January 5, 2023. Plaintiff Ordaz is currently employed by Defendant as a non-exempt employee.

Defendant maintained uniform timekeeping and payroll processes and procedures for all non-exempt employees. Defendant also maintained uniform work rules and procedures for all of its non-exempt employees.

Throughout Plaintiff's employment, she was the victims of unlawful, uniform and systematic practices that resulted in a continual violation of rights owed to Plaintiff and Defendant's other aggrieved employees as follows:

**Issue #1: Failure to Include Non-Discretionary Bonus Compensation in Regular Rate of Pay:**

Throughout the relevant time period, Plaintiffs and all other non-exempt employees were eligible to receive a non-discretionary incentive bonus through Defendant's Safety Incentive Program. The Safety Incentive Program was a quarterly bonus plan that was paid out to the all non-exempt employees who worked in a department that remained "injury-free" for an entire quarter. Plaintiffs allege that Defendant improperly excluded the non-discretionary safety bonuses when calculating the regular rate of pay used for payment of overtime and doubletime wages. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5<sup>th</sup> 542 (2018). Plaintiffs allege derivative violations of Labor Code section 226 and 201-203 based on Defendant's failure to properly calculate and pay overtime wages based on the correct regular rate of pay.

Based on the policies and practices alleged by Plaintiffs in connection with Issue #1, Plaintiffs hereby provide notice of Plaintiffs' claims that Defendant has violated Labor Code sections 201, 202, 203, 226, 510 1194(a), and 1197 and are seeking an award of penalties pursuant to each of these sections as well as civil penalties pursuant to California Labor Code sections 204 and 2699(f)(2).

**Issue #2: Failure to Authorize and Permit Rest Periods and Correctly Calculate Rest Period Premium Pay:**

Plaintiff and all other non-exempt employees who worked for Defendant during the relevant time period were not authorized and permitted to take rest periods if their shifts did not last at least four (4) hours. This policy and practice resulted in the denial of rest periods for employees who earned such a break by working shifts that lasted at least three and one-half hours (3 ½) but less than four (4) hours. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4<sup>th</sup> 1004 (2012). Plaintiffs also allege that Defendant generally did not pay rest period premium pay for all instances where a violation occurred and, on the rare occasion when Defendant did pay rest period premiums, Defendant improperly excluded the non-discretionary safety bonuses when calculating/paying meal and/or rest break premiums. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5<sup>th</sup> 858 (2021). Plaintiffs allege derivative violations of Labor Code section 226 and 201-203 based on Defendant's failure to properly calculate and pay meal/rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5<sup>th</sup> 93 (2022).

Based on the policies and practices alleged by Plaintiffs in connection with Issue #2, Plaintiffs hereby provide notice of Plaintiffs' claims that Defendant has violated Labor Code sections 201, 202, 203, 226, and 226.7 and are seeking an award of penalties pursuant to each of these sections as well as civil penalties pursuant to California Labor Code sections 204 and 2699(f)(2).

**Issue #3: Failure to Provide Meal Periods and Correctly Calculate Meal Period Premium Pay:**

Plaintiff and all other non-exempt employees who worked for Defendant during the relevant time period were subjected to multiple violations of their right to be provided with legally compliant meal periods. Specifically, Defendant implemented a meal period waiver policy and, in administering this policy on the incorrect assumption that it operated to waive all meal periods regardless of length, wrongfully denied meal periods to non-exempt employees who worked shifts that lasted more than six (6) hours. On the occasions

when Defendant permitted its non-exempt employees to take meal periods, the employees were frequently instructed to take their meals at the end of their shifts to accommodate the demands of the customers. This resulted in non-exempt employees not receiving timely meal periods. Plaintiffs also allege that Defendant generally did not pay meal period premium pay for all instances where a violation occurred and, on the rare occasion when Defendant did pay meal period premiums, Defendant improperly excluded the non-discretionary safety bonuses when calculating/paying meal and/or rest break premiums. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5<sup>th</sup> 858 (2021). Plaintiffs allege derivative violations of Labor Code section 226 and 201-203 based on Defendant's failure to properly calculate and pay meal/rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5<sup>th</sup> 93 (2022).

Based on the policies and practices alleged by Plaintiffs in connection with Issue #3, Plaintiffs hereby provide notice of Plaintiffs' claims that Defendant has violated Labor Code sections 201, 202, 203, 226, 226.7, and 512, and are seeking an award of penalties pursuant to each of these sections as well as civil penalties pursuant to California Labor Code sections 204 and 2699(f)(2).

### **CONCLUSION**

We provide notice pursuant to California Labor Code section 2699.3 of the Private Attorneys General Act of 2004, and specifically ask that your agency conduct an investigation as to the alleged violations described herein; or, in the alternative, if the agency does not intend to investigate the alleged violations, we ask that you issue an immediate notification letter to our office confirming the same so that we may proceed with our civil action with regard to the PAGA claims described herein against Defendant.

If you require anything further and/or have any questions, please do not hesitate to contact me. Nothing in this letter is intended to be, nor should be construed as, an admission against the interests of Plaintiffs, and/or other current and/or former employees, and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,

**Barkhordarian Law Firm**

By: \_\_\_\_\_

  
Gregory R. Wong, Esq.

cc:

Santa Ana Country Club  
Agent of Service of Process: Dean Liuzzi  
20382 Newport Blvd.  
Santa Ana, CA 92707

Sent via Certified Mail

# **EXHIBIT B**

  
**BARKHORDARIAN**  
— L A W F I R M —

6047 Bristol Parkway  
Culver City, CA 90230  
t. 323.450.2777 f. 323.594.8227

June 28, 2024

VIA CERTIFIED MAIL TO EMPLOYER

c/o John M. Scheppach, Esq.  
Scheppach Bauer PC  
23181 Verdugo Drive, Suite 105-A  
Laguna Hills, CA 92653

VIA ELECTRONIC SUBMISSION

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

**Re: Jaime Hernandez, et al. v. Santa Ana Country Club; LWDA CASE NO. LWDA-CM-952070-23**  
*First Amended PAGA Notice Pursuant to California Labor Code section 2699.3, et seq.*

Dear Sir/Madam:

This firm represents Jaime Hernandez and Isidro Ordaz (hereinafter “Plaintiffs”), and all other aggrieved employees, who have filed a lawsuit against their employer Santa Ana Country Club (hereinafter “Defendant”) with regard to alleged violations of the California Labor Code (“Labor Code”) committed by Defendant in the Superior Court of California, County of Orange, Case No. 30-2023-01335144-CU-WT-CXC. This letter shall serve as an amended notice and a request pursuant to Labor Code section 2699.3, et seq. (Private Attorneys General Act of 2004 (hereinafter “PAGA”)), that your agency investigate the alleged violations by Defendant described herein against Plaintiffs and other current and/or former non-exempt employees. If the agency does not intend to investigate the alleged violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

**Statement of Specific Provisions of the Labor Code Alleged to Have Been Violated**

The above-mentioned civil action was brought by Plaintiffs against Defendant for violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and the applicable industrial wage orders. This notice is amended to include additional claims for violations of Labor Code §§ 233 and 246.

### **Facts and Theories in Support of Alleged Violations**

Defendant is a 121+ year old country club located at 20382 Newport Boulevard, Santa Ana, CA 92707. Plaintiff Hernandez worked for Defendant as a non-exempt employee from April 27, 2022 until his termination on January 5, 2023. Plaintiff Ordaz is currently employed by Defendant as a non-exempt employee.

Defendant maintained uniform timekeeping and payroll processes and procedures for all non-exempt employees. Defendant also maintained uniform work rules and procedures for all of its non-exempt employees.

Throughout Plaintiffs' employment, they were the victims of unlawful, uniform and systematic practices that resulted in a continual violation of rights owed to Plaintiff and Defendant's other aggrieved employees as follows:

#### **Issue #1: Failure to Include Non-Discretionary Compensation in Regular Rate of Pay:**

Under California law, the "[r]egular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any nonhourly compensation the employee has earned." *Alvarado v. Dart Container Corp. of California*, 4 Cal.5<sup>th</sup> 542, 554 (2018). Under California law, an employee's regular rate encompasses "not only hourly wages but also nondiscretionary payments." *Ferra v. Loews*, 11 Cal.5<sup>th</sup> 858, 866 (2021). When nonhourly compensation (including bonuses, incentives, rewards, etc.) is included in the regular rate, it impacts an employee's overtime, double-time, meal and rest period premium payments, and sick leave payouts. *Alvarado v. Dart Container Corp. of California*, 4 Cal.5<sup>th</sup> 542 (2018) (overtime and double-time are calculated based on the regular rate); *Ferra v. Loews*, 11 Cal.5<sup>th</sup> 858 (2021) (meal and rest period premiums are calculated based on the regular rate); Labor Code, § 246(1)(1)-(2) (sick leave is paid at regular rate).

Throughout the relevant time period, Plaintiffs and all other non-exempt employees of Defendant were eligible for and received various nonhourly, nondiscretionary forms of compensation that were not factored into the regular rate, causing an underpayment in overtime, double-time, meal/rest period premiums, and sick leave payouts.

Plaintiffs and all other non-exempt employees were eligible to receive a non-discretionary incentive bonus through Defendant's Safety Incentive Program. The Safety Incentive Program included both quarterly and annual bonuses that were paid out to all the non-exempt employees who worked in a department that remained "injury-free" for an entire quarter and an entire year, respectively. The quarterly incentives were paid out via gift cards, and the annual incentives were paid out pursuant to a raffle at which gift cards were awarded. Plaintiffs allege that Defendant improperly excluded non-hourly compensation, such as the non-discretionary safety bonuses, when calculating the regular rate of pay used for payment of overtime and doubletime wages. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5<sup>th</sup> 542 (2018). Plaintiffs allege derivative violations of Labor Code sections 226 and 201-203 based on Defendant's failure to properly calculate and pay overtime and/or doubletime wages based on the correct regular rate of pay. As a result, Defendant also improperly calculated aggrieved employees' rate of sick pay pursuant to California Labor Code §§ 233 and 246.

Based on the policies and practices alleged by Plaintiffs in connection with Issue #1, Plaintiffs hereby provide notice of Plaintiffs' claims that Defendant has violated Labor Code sections 201, 202, 203, 226, 233, 246, 510, 512, 1194(a), and 1197 and are seeking an award of penalties pursuant to each of these sections as well as civil penalties pursuant to Labor Code sections 204 and 2699(f)(2).

**Issue #2: Failure to Authorize and Permit Rest Periods and Correctly Calculate Rest Period Premium Pay:**

Under California law, all non-exempt employees must be authorized and permitted to take a net 10-minute rest break for every four (4) hours worked, or major fraction thereof. IWC Wage Orders, § 12(A). Non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1029 (2012).

Plaintiffs and all other non-exempt employees who worked for Defendant during the relevant time period were not provided with legally-compliant rest periods under California law.

Plaintiffs and all other non-exempt employees who worked for Defendant during the relevant time period were not authorized and permitted to take rest periods if their shifts did not last at least four (4) hours. This policy and practice resulted in the denial of rest periods for employees who earned such a break by working shifts that lasted at least three and one-half hours (3 ½) but less than four (4) hours. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Plaintiffs also allege that Defendant generally did not pay rest period premium pay for all instances where a violation occurred and, on the rare occasion when Defendant did pay rest period premiums, Defendant improperly excluded the non-discretionary compensation (such as the safety bonuses) when calculating/paying meal and/or rest break premiums. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021). Plaintiffs allege derivative violations of Labor Code section 226 and 201-203 based on Defendant's failure to properly calculate and pay meal/rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022).

Based on the policies and practices alleged by Plaintiffs in connection with Issue #2, Plaintiffs hereby provide notice of Plaintiffs' claims that Defendant has violated Labor Code sections 201, 202, 203, 226, and 226.7 and are seeking an award of penalties pursuant to each of these sections as well as civil penalties pursuant to Labor Code sections 204 and 2699(f)(2).

**Issue #3: Failure to Provide Meal Periods and Correctly Calculate Meal Period Premium Pay:**

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an uncontrolled, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. Labor Code, § 512(a); IWC Wage Orders, § 11. Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second uncontrolled, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. Labor Code, § 512(a); IWC Wage Orders, § 11.

Plaintiffs and all other non-exempt employees who worked for Defendant during the relevant time period were not provided with legally-compliant meal periods under California law.

Plaintiffs and all other non-exempt employees who worked for Defendant during the relevant time period were subjected to multiple violations of their right to be provided with legally compliant meal periods. Specifically, Defendant implemented a meal period waiver policy and, in administering this policy on the incorrect assumption that it operated to waive all meal periods regardless of length, wrongfully denied meal

periods to non-exempt employees who worked shifts that lasted more than six (6) hours. On the occasions when Defendant permitted its non-exempt employees to take meal periods, the employees were frequently instructed to take their meals at the end of their shifts to accommodate the demands of the customers. Defendant would provide food for employees, and in order to coerce them into taking a late meal period, would inform them that they could avail themselves of this food at the end of their shift. Alternatively, if Defendant provided food/meals for employees during the shift, the food/meals were provided late into an employee's shift, causing them to take a late meal period. This resulted in non-exempt employees not receiving timely meal periods. Plaintiffs also allege that Defendant generally did not pay meal period premium pay for all instances where a violation occurred and, on the rare occasion when Defendant did pay meal period premiums, Defendant improperly excluded non-discretionary compensation (such as the safety bonuses) when calculating/paying meal and/or rest break premiums. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5<sup>th</sup> 858 (2021). Plaintiffs allege derivative violations of Labor Code sections 226 and 201-203 based on Defendant's failure to properly calculate and pay meal/rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5<sup>th</sup> 93 (2022).

Based on the policies and practices alleged by Plaintiffs in connection with Issue #3, Plaintiffs hereby provide notice of Plaintiffs' claims that Defendant has violated Labor Code sections 201, 202, 203, 226, 226.7, and 512, and are seeking an award of penalties pursuant to each of these sections as well as civil penalties pursuant to Labor Code sections 204 and 2699(f)(2).

### **CONCLUSION**

We provide notice pursuant to Labor Code section 2699.3 of the Private Attorneys General Act of 2004, and specifically ask that your agency conduct an investigation as to the alleged violations described herein; or, in the alternative, if the agency does not intend to investigate the alleged violations, we ask that you issue an immediate notification letter to our office confirming the same so that we may proceed to amend our civil action with regard to the PAGA claims described herein against Defendant.

If you require anything further and/or have any questions, please do not hesitate to contact me. Nothing in this letter is intended to be, nor should be construed as, an admission against the interests of Plaintiffs, and/or other current and/or former employees, and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,

**Barkhordarian Law Firm**

By: John F. Litwin  
John F. Litwin, Esq.