

Kevin P. Smith (SBN: 252580)
DEFIANCE LAW, PLLC
 7512 Bridgeport Way West, Ste A
 Lakewood, WA. 98499
 Phone: (253) 244- 7327
 Fax: (253) 275-0208
 Email: k.smith@defiance.law

Attorneys for Plaintiff JOAQUIN DEL CID JR., as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

JOAQUIN DEL CID JR., on behalf of himself
 and all others similarly situated,

Plaintiff,

v.

JONATHAN CLUB, a California Corporation,
 and DOES 1 through 50, inclusive,

Defendant,

Case No. **20STCV12113**

**REPRESENTATIVE ACTION
 COMPLAINT FOR CIVIL FINES**

1. Civil Penalties under the Private Attorneys
 General Act (PAGA)

DEMAND FOR JURY TRIAL

Plaintiff, JOAQUIN DEL CID JR., as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of Plaintiff and other current and former employees, complains and alleges as follows:

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1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect
4 civil penalties for Defendant's Labor Code violations.

5 2. Defendant and employer, JONATHAN CLUB, violated numerous wage and hour
6 laws with respect to Plaintiff and other aggrieved employees by failing to provide, for example:
7 accurate and itemized wages statements, payment for all hours worked (including regular wages
8 and overtime), failure to provide a minimum wage lawful meal periods, lawful rest periods,
9 timely payment during employment, and payment upon separation of employment.

10 **PARTIES**

11 **The Plaintiff**

12 3. Defendant employed Plaintiff as a security guard/ security office. Plaintiff and
13 Aggrieved Employees were nonexempt employees.

14 4. Plaintiff and Aggrieved Employees regularly worked more than eight hours per
15 day or 40 hours per week without lawful compensation.

16 5. At all times during her employment, Plaintiff was a dedicated, hard-working, and
17 loyal employee.

18 6. Plaintiff and Aggrieved Employees' wages were forcibly deducted for a meal
19 deduction listed as "non-tax meals" on their wage statement. This deduction occurred regardless
20 of whether or not they consumed the meal.

21 7. Defendant failed to authorize and permit all required rest and meal periods for
22 Plaintiff and Aggrieved employees because, upon information and belief, employer maintained
23 unlawful rest and meal period and policies/practices. Defendant failed to provide Plaintiff and
24 Aggrieved employees with an additional hour of premium pay at the regular rate of pay for each
25 rest and meal period violation, as required by Labor Code section 226.

26 8. California Labor Code § 2699(a) specifically provides for a private right of action
27 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
28 law, any provision of this code that provides for a civil penalty to be assessed and collected by

1 the Labor and Workforce Development Agency or any of its departments, divisions,
2 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
3 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
4 herself and other current or former employees pursuant to the procedures specified in Section
5 2699.3.”

6 9. Plaintiff has exhausted his administrative remedies pursuant to California Labor
7 Code § 2699.3. On January 10, 2020, Plaintiff gave written notice by online filing to the Labor
8 and Workforce Development Agency and by certified mail to Defendants of the specific
9 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
10 former aggrieved employees, including the facts and theories to support the violations. Plaintiff’s
11 PAGA case numbers is Case No. LWDA-CM-765970-20. At the time of this filing, 65 days has
12 elapsed since Plaintiff provided notice, but the Labor and Workforce Development Agency has
13 not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the
14 notice.

15 **The Defendant**

16 10. JONATHAN CLUB, is a California corporation doing business in California.
17 Plaintiff is informed and believes, and based thereupon alleges, that Defendant is conducting
18 business in California in good standing.

19 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of
20 participation in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50,
21 inclusive, but on information and belief allege that said Defendants are legally responsible for
22 the payment of penalties as a result of the violations, and therefore sues these Defendants by
23 such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities
24 of the DOE Defendant when ascertained.

25 12. Unless otherwise specified herein, Plaintiff is informed and believe, and based
26 thereon alleges that each DOE Defendant was the agent and employee of each Defendant, and
27 in doing the things hereinafter mentioned, were at all times acting within the course and scope
28 of that agency and employment.

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JURISDICTION AND VENUE

13. Under California Code of Civil Procedure §410.10, this court “may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” This court has jurisdiction over the subject matter in this complaint, a violation of California Labor Code.

14. Plaintiff is a citizen of California. The State of California is a sovereign state of the United States. Plaintiff is informed and believes that Defendant is a citizen of California. There is no federal question at issue, as the issue herein is based solely on California law.

15. Venue is proper in the County of Contra Costa because this is an action to recover penalties imposed by statute, and the cause of action arose in the County of Contra Costa.

FIRST CAUSE OF ACTION

**(Civil Penalties Under the Private Attorneys General Act,
Labor Code § 2699 et seq., For Violations of the Labor Code)**

16. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

17. Plaintiff sent notice to Defendant and the Labor Workforce Development Agency (LWDA) on or about January 10, 2020, detailing Defendant’s alleged violations. Over 65 days have passed since the postmark date of the notice and Plaintiff has not been in receipt of any communication from the LWDA indicating an intent to pursue this matter. Therefore, Plaintiff now acts as a private attorney general to collect civil penalties for Defendant’s Labor Code violations.

18. California Labor Code §§2698-2699.5, in relevant part provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency...for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

1 19. As an aggrieved employee, Plaintiff brings this civil action to recover civil
2 penalties for Defendant's Labor Code violations.

3 **FIRST VIOLATION**

4 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

5 20. Under California Labor Code §512(a), "An employer may not employ an
6 employee for a work period of more than five hours per day without providing the employee with
7 a meal period of not less than 30 minutes, except that if the total work period per day of the
8 employee is no more than six hours, the meal period may be waived by mutual consent of both
9 the employer and employee."

10 21. Defendant violated Labor Code § 512 by failing to provide Plaintiff, and other
11 qualifying employees who worked shifts of greater than five hours, meal periods within the first
12 five hours of the shifts worked. Defendant failed to pay Plaintiff one hour's pay at Plaintiff's
13 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
14 section 512.

15 **SECOND VIOLATION**

16 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

17 22. Under California Labor Code §226.7(b), "An employer shall not require an
18 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

20 23. Industrial Welfare Commission (IWC) provides, "Every employer shall authorize
21 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
22 of each work period. The authorized rest period time shall be based on the total hours worked
23 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

24 24. Defendant failed to authorize and permit Plaintiff and other employee to take rest
25 periods and mandated by the Wage Order.

26 25. Under §226.7(c), an employer who violates §226.7(b), "...shall pay the employee
27 one additional hour of pay at the employee's regular rate of compensation for each workday that
28 the meal or rest or recovery period is not provided."

1 26. Defendant failed to pay Plaintiff and other employees who were not provided rest
2 periods one hour of pay at their regular rate of pay.

3 **THIRD VIOLATION**

4 **(Failure to Provide Complete and Accurate Wage Statements,**
5 **in Violation of Labor Code Section 226)**

6 27. Under California Labor Code §226(a), an employer is legally obligated to provide
7 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
8 in writing...”

9 28. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
10 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
11 Labor Code § 2699.

12 **FOURTH VIOLATION**

13 **(Failure to Pay Overtime Wages)**

14 29. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
15 employer is required to compensate employees for all overtime, which is calculated at one and
16 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
17 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
18 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
19 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
20 any workweek.

21 30. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
22 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
23 Labor Code § 2699.

24 **FIFTH VIOLATION**

25 **(Failure to Pay Minimum Wages)**

26 31. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
27 payment to an employee of less than the applicable minimum wage for all hours worked in a
28 payroll period is unlawful.

1 32. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
2 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
3 Labor Code § 2699.

4 **SIXTH VIOLATION**

5 **(Failure to Timely Pay Wages During Employment)**

6 33. Pursuant to California Labor Code § 204, for all labor performed between the 1st
7 and 15th days of any calendar month, an employer is required to pay its employees between the
8 16th and 26th day of the month during which the labor was performed. California Labor Code §
9 204 also provides that for all labor performed between the 16th and 26th days of any calendar
10 month, Defendants are required to pay their employees between the 1st and 15th day of the
11 following calendar month. In addition, California Labor Code § 204 provides that all wages
12 earned for labor in excess of the normal work period shall be paid no later than the payday of the
13 next regular payroll period.

14 34. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
15 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
16 Labor Code § 2699.

17 **SEVENTH VIOLATION**

18 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

19 35. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
20 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
21 201 mandates that if an employer discharges an employee, the employee's wages accrued and
22 unpaid at the time of discharge are due and payable immediately.

23 36. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
24 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
25 Labor Code § 2699.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff prays for the following relief:

- 28 1. For penalties in an amount according to proof;

- 1 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
2 3. For such other and further relief as this Court may deem just and proper.
3

4 Respectfully Submitted,

5 Dated: March 26, 2020

6 **DEFIANCE LAW, PLLC**

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8
9 By:

10 
11 Kevin Smith
12 Attorney for Plaintiff

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14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial on all issues so triable.

16 Dated: March 26, 2020

17 **DEFIANCE LAW, PLLC**

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19 By:

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21 Kevin Smith
22 Attorney for Plaintiff
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