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11 Situated and the State of California

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF KERN – METROPOLITAN DIVISION
14

15 ALICIA WILEY, Individually, and on Behalf
of Other Members of the Public Similarly
16 Situated and the State of California,

17 Plaintiff,

18 vs.

19 SECOND AMENDMENT SPORTS, INC.,
20 and DOES 1 through 25, inclusive,

21 Defendants.
22

CASE NO: BCV-20-100349
Assigned for All Purposes to:
Hon. Thomas S. Clark – Dept. 17

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY MINIMUM
WAGES OWED;
(2) FAILURE TO PAY OVERTIME
WAGES OWED;
(3) FAILURE TO PROVIDE TIMELY
REST PERIODS OR PAY PREMIUM
WAGES
(4) FAILURE TO PROVIDE TIMELY
MEAL PERIODS OR PAY PREMIUM
WAGES;
(5) INACCURATE WAGE STATEMENTS
(6) FAILURE TO PAY WAGES AT
TERMINATION; AND
(7) UNFAIR COMPETITION
(8) LAB. CODE, §§ 2698 ET SEQ. (PAGA)**

Trial Date: None
Complaint filed: February 4, 2020

1 Comes now ALICIA WILEY (“Plaintiff”), who individually and on behalf of other
2 members of the public similarly situated, and on behalf of the State of California, asserts claims
3 against SECOND AMENDMENT SPORTS, INC. and Does 1 through 25, inclusive, (collectively
4 “Defendants”) as follows:

5 **JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure § 382.
7 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. Plaintiff filed an exhaustion letter with the California Labor and Workforce
10 Development Agency (“LWDA”) and Division of Occupational Safety and Health (“DOSH”)
11 providing notice of her intent to bring a private attorneys general action for recovery of penalties
12 under the California Labor Code Private Attorneys General Action of 2004, California Labor Code
13 §§ 2698, *et seq.* (“PAGA”). PAGA permits an “aggrieved employee” to bring a lawsuit for civil
14 penalties to address an employer’s violations of the California Labor Code committed against
15 them and other current and former employees. Upon the conclusion of the PAGA exhaustion
16 period, Plaintiff is filing this First Amended Complaint, as permitted by law, to seek penalties as a
17 private attorney general for the California Labor Code violations committed against her and
18 Defendants’ other current and other former California employees.

19 3. This Court has jurisdiction over this action pursuant to the California Constitution,
20 Article VI, §10, which grants the California Superior Court original jurisdiction in all causes
21 except those given by statute to other courts. The statutes under which this action is brought do not
22 give jurisdiction to any other court.

23 4. This Court has jurisdiction over Defendants because, upon information and belief,
24 each defendant is either a resident of California, has sufficient minimum contacts in California, or
25 otherwise intentionally avails itself of the California labor market.

26 5. Venue is proper in this Court because this action arises from Plaintiff’s labor
27 contracted for and/or provided in the County of Kern.

28 **PARTIES**

1 6. Plaintiff is domiciled in, and at all times mentioned in this complaint was
2 domiciled in, Bakersfield, California.

3 7. Second Amendment Sports, Inc. is a California corporation and is headquartered in
4 Bakersfield, California. Plaintiff is informed and believes, and thereon alleges, that at all relevant
5 times mentioned herein Second Amendment Sports, Inc. was and is a corporation that was at all
6 times mentioned herein licensed and qualified to do business in California. On information and
7 belief, Plaintiff alleges that at all relevant times referenced herein Defendants did and continue to
8 transact business in California.

9 8. Whenever in this complaint reference is made to any act, deed, or conduct of
10 Second Amendment Sports, Inc., the allegation means that Second Amendment Sports, Inc.
11 engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents,
12 employees, or representatives, who was actively engaged in the management, direction, control, or
13 transaction of the ordinary business and affairs of Second Amendment Sports, Inc..

14 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
15 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
16 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
17 amend this complaint to insert the true names and capacities of the Doe Defendants at such time as
18 the identities of the Doe Defendants have been ascertained.

19 10. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
20 the partners, agents, or principals and co-conspirators of Second Amendment Sports, Inc., and of
21 each other; that Second Amendment Sports, Inc. and the Doe Defendants performed the acts and
22 conduct herein alleged directly, aided and abetted the performance thereof, or knowingly
23 acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of
24 the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

25 11. Plaintiff is further informed and believes, and thereon alleges, that at all times
26 herein material, each Defendant was completely dominated and controlled by its co-Defendants
27 and each was the alter ego of the other. Whenever and wherever reference is made in this
28 complaint to any conduct by Second Amendment Sports, Inc. or Defendants, such allegations and

1 references shall also be deemed to mean the conduct of each of the Defendants, acting
2 individually, jointly, and severally. Whenever and wherever reference is made to individuals who
3 are not named as Defendants in this complaint, but were employees and/or agents of Defendants,
4 such individuals at all relevant times acted on behalf of Defendants named in this complaint within
5 the scope of their respective employments.

6 **CLASS ACTION ALLEGATIONS**

7 12. Plaintiff brings this action on her own behalf, as well as on behalf of each and all
8 other persons similarly situated, and thus, seeks class certification under California Code of Civil
9 Procedure § 382.

10 13. All claims alleged herein arise under California law for which Plaintiff seeks relief
11 as authorized by California law.

12 14. The proposed Class is comprised of and defined as:

13 Any and all persons who are or were employed as a non-exempt
14 employee by Second Amendment Sports, Inc. in the state of
15 California within four years prior to the filing of the original
16 complaint in this action until resolution of this lawsuit (hereinafter
17 collectively referred to as the “Class” or “Class Members”).

18 15. Alternative Workweek Subclass is comprised of and defined as:

19 All Class Members who were subject to an alternative workweek
20 agreement and who were required to work less than a regularly
21 scheduled time (hereinafter collectively referred to as the
22 “Alternative Workweek Subclass Members”).

23 16. The proposed Waiting Time Subclass is comprised of and defined as:

24 All Class Members whose employment with Second Amendment
25 Sports, Inc. was terminated at any time within the three year period
26 prior to the filing of the original complaint in this action until
27 resolution of this lawsuit (collectively, the “Waiting Time Subclass
28 Members”).

17. The proposed Paystub Subclass is comprised of and defined as:

All Class Members employed by Second Amendment Sports, Inc.
at any time within one year prior to the filing of the original
complaint in this action until resolution of this lawsuit
(collectively, the “Paystub Subclass Members”).

The Waiting Time Subclass Members and Paystub Subclass Members are collectively

1 referred to as the “Subclass” or “Subclass Members” where appropriate.

2 18. There is a well-defined community of interest in this litigation and the Class and
3 Subclass Members are easily ascertainable as set forth below:

4 a. **Numerosity:** The members of the Class and Subclasses are so numerous that
5 joinder of all Class Members and Subclass Members would be unfeasible and impractical. The
6 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
7 Class is estimated to be greater than 200 individuals, the Alternative Workweek Subclass is
8 estimated to be greater than 100 individuals, the Waiting Time Subclass is estimated to be greater
9 than 100 individuals, and the Paystub Subclass is estimated to be greater than 50 individuals and
10 the identity of such membership is readily ascertainable by inspection of Defendants’ employment
11 records.

12 b. **Typicality:** Plaintiff is qualified to, and will fairly and adequately protect the
13 interests of each Class Member and Subclass Member with whom she has a well-defined
14 community of interest. Plaintiff’s claims herein alleged are typical of those claims which could be
15 alleged by any Class Member and/or Subclass Member, and the relief sought is typical of the relief
16 which would be sought by each of the Class Members and/or Subclass Members in separate
17 actions. All Class Members and Subclass Members have been similarly harmed by being denied
18 wages, including minimum, overtime, regular, and premium wages due to Defendants’ policies
19 and companywide practices. Further, Defendants benefited from the same type of unfair and/or
20 wrongful acts as to each Class Member and Subclass Member.

21 c. **Adequacy:** Plaintiff is qualified to, and will fairly and adequately protect the
22 interests of each Class Member and Subclass Member with whom she has a well-defined
23 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges she
24 has an obligation to make known to the Court any relationships, conflicts, or differences with any
25 Class Member and/or Subclass Member. Plaintiff’s attorneys and the proposed Class and Subclass
26 counsel are versed in the rules governing class action discovery, certification, and settlement and
27 experienced in handling such matters.

28 d. **Superiority:** The nature of this action makes the use of class action adjudication

1 superior to other methods. A class action will achieve economies of time, effort, judicial resources,
2 and expense compared to separate lawsuits. The prosecution of separate actions by individual
3 members of the Class and/or Subclass would create a risk of inconsistent and/or varying
4 adjudications with respect to the individual Class Members and/or Subclass Members, establishing
5 incompatible standards of conduct for the Defendants and resulting in the impairment of the Class
6 Members' and/or Subclass Members' rights and the disposition of their interests through actions to
7 which they were not parties.

8 **e. Public Policy Considerations:** Employers in the state of California violate
9 employment and labor laws every day. Current employees are often afraid to assert their rights out
10 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
11 they believe their former employers may damage their future endeavors through negative
12 references and/or other means. The nature of this action allows for the protection of current and
13 former employees' rights without fear for retaliation or damage.

14 19. There are common questions of law and fact as to the Class and Subclass that
15 predominate over questions affecting only individual members including, but not limited to:

16 a. whether Defendants failed to pay Class Members legally required minimum wage for all
17 hours worked or whether Defendants' rounding practices failed to compensate Plaintiff and Class
18 Members for all of their hours worked;

19 b. whether Defendants' failure to pay Class Members legally required minimum wage for
20 all hours worked was willful;

21 c. whether Defendants kept accurate records of hours worked by Class Members;

22 d. whether Defendants failed to provide meal periods and rest breaks in accordance with
23 California Labor Code §§ 226.7, 512 and the applicable California Industrial Welfare Commission
24 ("IWC") Wage Order;

25 e. whether Defendants' alternative workweek scheduling practices resulted in a failure to
26 pay overtime wages due to Alternative Workweek Subclass Members;

27 f. whether Defendants failed to pay Plaintiff and Waiting Time Subclass Members all
28 wages earned either at the time of discharge, or within seventy-two hours of their voluntarily

1 leaving Defendants' employ;

2 g. whether Defendants complied with the wage reporting requirements of the California
3 Labor Code, including, but not limited to, California Labor Code §226;

4 h. whether Defendants failed to record meal periods in accordance with the applicable IWC
5 Wage Order;

6 i. whether Defendants' conduct was willful and/or reckless;

7 j. whether Defendants engaged in unfair competition in violation of California Business &
8 Professions Code §§ 17200, *et seq.*; and

9 k. the appropriate amount of damages, restitution, and/or monetary penalties resulting from
10 Defendants' violations of California law.

11 **FACTUAL ALLEGATIONS**

12 20. At all times set forth herein, Defendants employed Plaintiff and other persons
13 similarly situated throughout the state of California, and continue to employ such persons.

14 21. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
15 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
16 of the requirements of California's wage and employment laws.

17 22. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
18 should know, knew and/or should have known that Plaintiff and the other Class Members were
19 entitled to receive minimum wages and overtime wages, as well as premium wages for meal
20 periods and rest breaks and that they were not receiving minimum wages and/or premium wages
21 as required by law.

22 23. Plaintiff is informed and believes, and thereon allege, that at all times herein
23 mentioned, Defendants knew that they had a duty to compensate Plaintiff and Class Members for
24 minimum wages and premium wages, and that Defendants had the financial ability to pay such
25 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so, and falsely
26 represented to Plaintiff and Class Members that they were properly denied wages, all in order to
27 increase Defendants' profits.

28 ///

1 **CLASS ACTION CLAIMS**

2 **FIRST CAUSE OF ACTION**

3 **(For Failure to Pay Minimum Wages Owed by Plaintiff and Class Members**

4 **Against All Defendants)**

5 24. Plaintiff incorporates by reference and reallege each and every allegation contained
6 above, as though fully set forth herein.

7 25. At all relevant times, California Labor Code §1197 provides that the minimum
8 wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the
9 payment of a lesser wage than the established minimum is unlawful.

10 26. Throughout the Class Members' employment, Defendants' time-keeping and/or
11 rounding practices and policy were not fair or neutral, and were used in such a manner that they
12 will result, over a period of time, in failure to compensate the Class Members properly for all the
13 time they have actually worked. With respect to those uncompensated minutes and hours worked,
14 Defendants failed to pay the Class Members at least minimum wage for all time worked, which
15 must be paid at a rate of not less than minimum wage pursuant to California law.

16 27. During the relevant time period, Defendants regularly failed to pay minimum wage
17 to Plaintiff and Class Members as required. Defendants' failure to pay Plaintiff and Class
18 Members minimum wages as required violates California Labor Code §1197.

19 28. Plaintiff and Class Members are entitled to recover the unpaid balance of their
20 minimum wage compensation as well as interest, costs, and attorneys' fees pursuant to California
21 Labor Code §1194 and liquidated damages in an amount equal to the wages unlawfully unpaid and
22 interest thereon pursuant to California Labor Code §1194.2.

23 **SECOND CAUSE OF ACTION**

24 **(For Failure to Pay Overtime Wages Owed by Plaintiff, Class Members, and Alternative**
25 **Workweek Subclass Members Against All Defendants)**

26 29. Plaintiff incorporates by reference and reallege each and every allegation contained
27 above, as though fully set forth herein.

28 30. Pursuant to applicable law, no employer shall be deemed to have violated the daily

1 overtime provisions by instituting, pursuant to the election procedures set forth in the applicable
2 wage orders, a regularly scheduled alternative workweek schedule of not more than ten (10) hours
3 per day within a 40 hour workweek without the payment of an overtime rate of compensation. All
4 work performed in any workday beyond the schedule established by the agreement up to 12 hours
5 a day or beyond 40 hours per week shall be paid at one and one-half (1 1/2) times the employee's
6 regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of
7 eight (8) hours on those days worked beyond the regularly scheduled number of workdays
8 established by the alternative workweek agreement shall be paid at double the employee's regular
9 rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for
10 not less than four (4) hours of work in any shift.

11 31. If an employer whose employees have adopted an alternative workweek agreement
12 requires an employee to work fewer hours than those that are regularly scheduled by the
13 agreement, the employer shall pay the employee overtime compensation at a rate of one and one-
14 half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8)
15 hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for
16 the day the employee is required to work the reduced hours.

17 32. Throughout Class Members' employment, because Defendants undercounted their
18 work as alleged in the First Cause of Action, they consequently failed to pay Class Members all
19 overtime wages for hours worked in excessive of applicable overtime and double overtime
20 thresholds.

21 33. In addition, insofar as Defendants maintained an alternative workweek schedule,
22 Defendants failed to pay the Alternative Workweek Subclass Members overtime compensation at
23 a rate of one and one-half (1 1/2) times each employee's regular rate of pay for all hours worked in
24 excess of eight (8) hours, and double the regular rate of pay for all hours worked in excess of 12
25 hours, for all days when Alternative Workweek Subclass Members were required to work fewer
26 hours than those that were regularly scheduled by the alternative workweek agreement.

27 34. Plaintiff seeks, on her behalf and on behalf of the Class and Alternative Workweek
28 Subclass, all damages and remedies available under the California Labor Code.

1 **THIRD CAUSE OF ACTION**

2 **(For Failure to Provide Timely Rest Periods or Pay Premium Wages**

3 **By Plaintiff and Class Members Against All Defendants)**

4 35. Plaintiff incorporates by reference and reallege each and every allegation contained
5 above, as though fully set forth herein.

6 36. Pursuant to the IWC Wage Orders applicable to Plaintiff and Class Members’
7 employment by Defendants: Every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work period. The authorized
9 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
10 rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted,
11 as hours worked, for which there shall be no deduction from wages.

12 37. California Labor Code §226.7 prohibits an employer from requiring any employee
13 to work during any rest period mandated by an applicable order of the IWC. Defendants were
14 required to authorize and permit employees such as Plaintiff and Class Members to take paid rest
15 periods, based upon the total hours worked at a rate of ten minutes net rest per four hours or major
16 fraction thereof, with no deduction from wages.

17 38. Despite said requirements of the IWC Wage Orders applicable to Plaintiff and
18 Class Members’ employment by Defendants, Defendants failed and refused to authorize and
19 permit Plaintiff and Class Members to take paid ten-minute rest periods for every four hours
20 worked, or major fraction thereof.

21 39. At all times relevant, including at times throughout the four year period preceding
22 the filing of the original complaint, Defendants failed to authorize and permit Plaintiff and Class
23 Members to take paid rest breaks for every four hours worked or major fraction thereof. Plaintiff
24 and Class Members regularly worked in excess of three and a half hours a day but were not given
25 the opportunity during their work periods to take a first ten minute rest break where they were
26 completely relieved of all duty; Plaintiff and Class Members regularly worked in excess of six
27 hours a day but were not given the opportunity during their work periods to take a second ten
28 minute rest break where they were completely relieved of all duty; and Plaintiff and Class

1 Members regularly worked in excess of ten hours a day but were not given the opportunity during
2 their work periods to take a third ten minute rest break where they were completely relieved of all
3 duty.

4 40. Defendants also failed to pay Class Members an extra hour of pay for days in
5 which they failed to provide compliant rest breaks.

6 41. As a proximate result of the aforementioned violations, Plaintiff and Class
7 Members have been damaged in an amount according to proof at time of trial.

8 42. Pursuant to California Labor Code § 226.7 and the IWC Wage Orders, Plaintiff and
9 Class Members are entitled to recover one hour of premium pay for each day in which a rest
10 period was not provided.

11 **FOURTH CAUSE OF ACTION**

12 **(For Failure to Provide Timely Meal Periods or Pay Premium Wages by Plaintiff and Class**
13 **Members Against All Defendants)**

14 43. Plaintiff incorporates by reference and reallege each and every allegation contained
15 above, as though fully set forth herein.

16 44. Pursuant to California Labor Code §512, no employer shall employ an employee
17 for a work period of more than five hours without providing a meal break of not less than thirty
18 minutes in which the employee is relieved of all of his or her duties. An employer may not employ
19 an employee for a work period of more than ten hours per day without providing the employee
20 with a second meal period of not less than thirty minutes, except that if the total hours worked is
21 no more than twelve hours, the second meal period may be waived by mutual consent of the
22 employer and the employee only if the first meal period was not waived.

23 45. Pursuant to the IWC Wage Orders applicable to Plaintiff and Class Members'
24 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
25 the work of the employee must prevent an employee from being relieved of all duties relating to
26 his or her work for the employer and the employee must consent in writing to the "on duty" meal
27 period. Plaintiff and Class Members did not consent in writing to an "on duty" meal period.
28 Further, the nature of the work of Plaintiff and Class Members was not such that they are

1 prevented from being relieved of all duties. Despite said requirements of the IWC Wage Orders
2 applicable to Plaintiff and Class Members' employment by Defendants and California Labor Code
3 §§ 512 and 226.7, Plaintiff and Class Members were not provided with timely meal periods. First
4 meal periods were regularly scheduled after 5 hours of work. Moreover, no second meal period
5 was provided for work periods that exceeded 10 hours. Defendants have also failed to pay Class
6 Members an extra hour of pay for days in which they failed to provide compliant meal breaks.

7 46. As a proximate result of the aforementioned violations, Plaintiff and Class
8 Members have been damaged in an amount according to proof at time of trial.

9 47. Pursuant to California Labor Code § 226.7, Plaintiff and Class Members are
10 entitled to recover one hour of premium pay for each day in which a meal period was not
11 provided.

12 **FIFTH CAUSE OF ACTION**

13 **(For Inaccurate Wage Statements by Plaintiff And Class Members Against All Defendants)**

14 48. Plaintiff incorporates by reference and reallege each and every allegation contained
15 above, as though fully set forth herein.

16 49. California Labor Code §226(a) sets forth reporting requirements for employers
17 when they pay wages: "Every employer shall ... at the time of each payment of wages, furnish
18 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
19 (2) total hours worked by the employee ... (5) net wages earned ... and (9) all applicable hourly
20 rates in effect during the pay period and the corresponding number of hours worked at each hourly
21 rate by the employee...."

22 50. California Labor Code §226(e) provides: "An employee suffering injury as a result
23 of a knowing and intentional failure by "an employer to comply with subdivision (a) shall be
24 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
26 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
27 shall be entitled to an award of costs and reasonable attorney's fees."

28 51. California Labor Code §226(e)(2)(B) provides: An employee is deemed to suffer

1 injury for purposes of this subdivision if the employer fails to provide accurate and complete
2 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and
3 the employee cannot promptly and easily determine from the wage statement alone one or more of
4 the following: (i) The amount of the gross wages or net wages paid to the employee during the pay
5 period or any of the other information required to be provided on the itemized wage statement
6 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the
7 employer made from gross wages to determine the net wages paid to the employee during the pay
8 period. Nothing in this subdivision alters the ability of the employer to aggregate deductions
9 consistent with the requirements of item (4) of subdivision (a). (iii) The name and address of the
10 employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
11 1682, the name and address of the legal entity that secured the services of the employer during the
12 pay period. (iv) The name of the employee and only the last four digits of his or her social security
13 number or an employee identification number other than a social security number.”

14 52. Defendants knowingly and intentionally failed, and continue to fail to furnish
15 Plaintiff and Paystub Subclass Members, complete and accurate wage statements upon each
16 payment of wages in violation of California Labor Code §226(a).

17 53. Plaintiff and Paystub Subclass Members were injured by these failures because,
18 among other things, these failures led them to believe that they were not entitled to be paid wages
19 for all hours they worked although they were so entitled, they were required to perform
20 mathematical computations to analyze whether wages paid, in fact, compensated for all hours, and
21 they were not able to determine from the wage statements alone one or more of the items required
22 to be provided. Defendants’ failure to comply with California Labor Code §226(a) also hindered
23 Plaintiff and Paystub Subclass Members from determining the amounts of wages actually owed to
24 them, and locating the legal entity responsible for the payment of wages.

25 54. Defendants will no doubt continue these illegal practices until such time as it is
26 forced to pay penalties in compliance with California Labor Code §226(e).

27 55. Plaintiff and Paystub Subclass Members, are entitled to recover statutory penalties,
28 interest, injunctive relief, and attorneys’ fees and costs pursuant to California Labor Code §226(e)

1 and (h).

2 **SIXTH CAUSE OF ACTION**

3 **(For Failure to Pay Wages at Termination by Plaintiff and Waiting Time Subclass Members**
4 **Against All Defendants)**

5 56. Plaintiff incorporates by reference and reallege each and every allegation contained
6 above, as though fully set forth herein.

7 57. California Labor Code §§ 201 and 202 require an employer who discharges an
8 employee to pay compensation due and owing to said employee immediately upon discharge and
9 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
10 and payable not later than seventy-two hours thereafter, unless the employee has given seventy
11 two hours' previous notice of his or her intention to quit in which case the employee is entitled to
12 his or her wages on their last day of work. California Labor Code § 203 provides that if an
13 employer willfully fails to pay compensation promptly upon discharge, as required by California
14 Labor Code §§201 and 202, the employer is liable for waiting time penalties in the form of
15 continued compensation for up to thirty work days.

16 58. During the relevant time period, Defendants willfully failed and refused, and
17 continues to willfully fail and refuse, to pay Plaintiff and Waiting Time Subclass Members their
18 wages, earned and unpaid, either at the time of discharge, or within seventy-two hours of their
19 voluntarily leaving Defendants' employ.

20 59. Defendants' willful failure to pay Plaintiff and Waiting Time Subclass Members
21 their wages earned and unpaid at the time of discharge, or within seventy-two hours of their
22 voluntarily leaving Defendants' employ, violates California Labor Code §§ 201 and 202.

23 60. As a result, Defendants are liable to Plaintiff and Waiting Time Subclass Members
24 for waiting time penalties pursuant to California Labor Code § 203, in an amount according to
25 proof at the time of trial.

26 **SEVENTH CAUSE OF ACTION**

27 **(For Unfair Competition by Plaintiff and Class Members Against All Defendants)**

28 61. Plaintiff incorporates by reference and reallege each and every allegation contained

1 above, as though fully set forth herein.

2 62. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
3 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
4 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
5 meaning of California Code of Civil Procedure §1021.5.

6 63. Defendants' policies, activities, and actions as alleged herein are violations of
7 California law and constitute unlawful business acts and practices in violation of California
8 Business and Professions Code §§ 17200, *et seq.*

9 64. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
10 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
11 practices of failing to pay Plaintiff and Class Members minimum, overtime, and premium wages,
12 among the other statutory violations alleged herein, over the past four years violates the California
13 Labor Code, including California Labor Code §§1198, 1182.12, 1197, 512, 226.7, 221-223, 201-
14 202, 204, and 226.

15 65. Plaintiff and Class Members have been personally aggrieved by Defendants'
16 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
17 property.

18 66. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
19 and Class Members are entitled to restitution of the wages and expenses withheld and benefits
20 wrongfully retained by Defendants during a period that commences four years prior to the filing of
21 the original complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure
22 §1021.5, and an award of costs.

23 **EIGHTH CAUSE OF ACTION**

24 **(For Civil Penalties under Labor Code §§ 2698 et seq.**

25 **by Plaintiff Against All Defendants)**

26 67. Plaintiff incorporates by reference and reallege each and every allegation contained
27 above, as though fully set forth herein.

28 68. On or about February 4, 2020, Plaintiff filed a PAGA Notice of Claims with the

1 LWDA (Case No. LWDA-CM-770491-20) asserting various violations of the Labor Code, as
2 reflected in Exhibit A. Plaintiff incorporates Exhibit A, and all facts and theories asserted therein,
3 as though fully set forth herein.

4 69. The government agencies to whom the violations were addressed did not
5 investigate and the time for them to do so has expired. With respect to any and all violations that
6 were curable under the PAGA, Defendants failed to cure the violations. Plaintiff exhausted all
7 administrative procedures under the PAGA and has standing to seek civil penalties in this action.

8 70. Defendants are liable for all civil penalties available under the PAGA.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

11 **a. Class Certification**

- 12 1. That this action be certified as a class action;
13 2. That Plaintiff be appointed as representative(s) of the Class and Subclasses;
14 3. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

15 **b. On the First through Seventh Causes of Action**

- 16 1. For compensatory damages in an amount not less than \$2,500,000;
17 2. For pre-judgment interest on any unpaid minimum wage and premium wage
18 compensation due from the day that such amounts were due according to proof;
19 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
20 interest thereon pursuant to California Labor Code § 1194.2;
21 4. For statutory penalties pursuant to California Labor Code §§ 203 and 226(e);
22 5. For restitution and disgorgement pursuant to Business & Professions Code §§
23 17200, *et seq.*;
24 6. For reasonable attorneys' fees and costs; and
25 7. For such other and further relief as the Court deems proper.

26 **c. On the Eighth Cause of Action**

- 27 1. For civil penalties in an amount not less than \$1,000,000;
28 2. For reasonable attorneys' fees and costs; and

1 3. For such other and further relief as the Court deems proper.

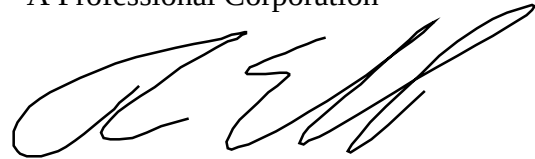
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff demands a trial by jury in this matter.

4 DATED: April 11, 2020

WORKWORLD LAW CORP.
A Professional Corporation

5
6
7 By: _____



RUBEN ESCOBEDO
Attorneys for Plaintiff, ALICIA WILEY,
Individually, and on Behalf of Other Members of
the Public Similarly Situated, and the State of
California

EXHIBIT A



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February 3, 2020

VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

CALIFORNIA DIVISION OF
OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., Rm. 9516
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Second Amendment Sports, Inc.
2523 Mohawk Street
Bakersfield, CA 93308

**Re: Alicia Wiley's Notice of Claims - Labor Code Private Attorneys General Act
of 2004, California Labor Code §§ 2698, *et seq.***

To the California Labor and Workforce Development Agency, the California Division of Occupational Safety and Health, and Second Amendment Sports, Inc.:

Lex Opus represents Alicia Wiley, who hereby issues the following Notice of Claims and intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of herself, the People of the State of California, and approximately more than 100 similarly situated current and former aggrieved employees employed in the State of California (hereinafter collectively "Employees") against Second Amendment Sports, Inc. ("Employer").

PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil

penalties. Employees intend to bring a civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil penalties specifically set forth within the text of the California Labor Code. Those penalties are sought for violations committed against Employees of Second Amendment Sports, Inc.

Pursuant to Section 2699.3, subdivision (a)(1), the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Minimum Wages Owed

Section 1197 provides that “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12, subd. (b).

Pursuant to Section 1197.1, “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

Throughout Employees’ employment, Employer’s time-keeping and/or rounding practices and policy were not fair or neutral, and were used in such a manner that they will result, over a period of time, in failure to compensate the Employees properly for all the time they have actually worked. With respect to those uncompensated minutes and hours worked, Employer failed to pay Employees at least minimum wage for all time worked, which must be paid at a rate of not less than minimum wage pursuant to California law.

B. Failure to Pay Overtime Wages Owed

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198.

Pursuant to Industrial Welfare Commission Wage Order 7, 10, and 17 employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in the applicable wage orders, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift.

If an employer whose employees have adopted an alternative workweek agreement requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

“Any 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

Employees incorporate the preceding sections herein. Throughout Employees’ employment, because Second Amendment Sports, Inc. undercounted Employees’ work, it consequently failed to pay Employees all overtime wages for hours worked in excessive of applicable overtime and double overtime thresholds.

In addition, insofar as Second Amendment Sports, Inc. maintained an alternative workweek schedule, Second Amendment Sports, Inc. failed to pay Employees overtime compensation at a rate of one and one-half (1 1/2) times the Employees’ regular rate of pay for all hours worked in excess of eight (8) hours, and double the Employees’ regular rate of pay for all hours worked in excess of 12 hours, for all days when Employees were required to work fewer hours than those that were regularly scheduled by the alternative workweek agreement.

C. Failure to Provide Timely Rest Periods or Pay Premium Wages

Pursuant to Industrial Welfare Commission Wage Orders 7 and 10, employers must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid. An employer who fails to provide a duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c). An employee must receive one paid 10 minute rest break for shifts lasting more than two hours up to six hours, a second paid 10 minute rest break for shifts lasting more than six hours up to 10 hours, and a third paid 10 minute rest break for shifts lasting more than 10 hours.

“Any 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

Employees incorporate the preceding sections herein. Throughout Employees’ employment, Second Amendment Sports, Inc. maintained an illegal practice of not providing Employees with timely and compliant first, second, or third sanctioned rest periods. Smokers received smoke breaks, but even smoke breaks were interrupted and shortened to less than 10 minutes. Employer has also failed to pay Employees an extra hour of pay for days in which they failed to provide compliant rest breaks. Thus, Employees were not provided compliant first, second, and third rest periods as required by law throughout their Employment.

D. Failure to Provide Timely Meal Periods or Pay Premium Wages

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.” Cal. Lab. Code, § 512, subd. (a).

Pursuant to Labor Code sections 226.7 and 512, and Wage Orders 7, 10, and 17, duty-free meal periods of no less than thirty (30) minutes are required for all non-exempt employees who work at least five (5) hours in a work period per day. The employee must be free to leave the employer’s premises. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Time records of meal periods must be kept. Meal periods must be paid when the employee is not relieved of all duties or free to leave the premises. An employer who fails to provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for each day in which a duty-free meal period is not provided.

“Any 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

Employees incorporate the preceding sections herein. Throughout Employees’ employment, Second Amendment Sports, Inc. maintained an illegal practice of not providing Employees with timely and compliant first and second sanctioned meal periods. First meal periods were regularly scheduled after 5 hours of work. Moreover, no second meal period was provided for work periods that exceeded 10 hours. Employer has also failed to pay Employees an extra hour of pay for days in which they failed to provide compliant meal breaks.

E. Untimely Payment of Wages

Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. Cal. Lab. Code, § 210, subd. (a).

Employees incorporate the preceding sections herein. Rather than timely paying Employees all minimum, overtime, and premium wages due within the periods set forth above, throughout Employees’ employment, Second Amendment Sports, Inc. failed to timely pay Employees for all minimum, overtime, and premium wages earned as required by law.

F. Failure to Keep Accurate Records of Hours Worked

“Every person employing labor in this state shall: ... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.” Lab. Code, § 1174, subd. (d).

Moreover, Wage Orders 7 and 10 require employers to keep accurate information regarding their employees, including time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. The “standard conditions of labor fixed by the commission [in Wage Orders 7 and 14] shall be ... the standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.” Lab. Code, § 1198.

Employees incorporate the preceding section herein. Throughout Employees’ employment, Employer failed to accurately record and keep payroll records showing the hours worked daily by Employees for the minimum period of three years, failed to keep accurate information showing when Employees began and ended each work period, and failed to keep accurate records of Employees’ meal periods.

G. Failure to Issue and Keep Records of Wage Statements

California Labor Code section 226, subdivision (a) mandates that employers issue accurate itemized statements semimonthly or at the time of each payment of wages, and that “a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”

“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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....” Cal. Lab. Code, § 226, subd. (a).

“An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer.” Cal. Lab. Code, § 226, subd. (b). “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” Cal. Lab. Code, § 226, subd. (c).

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3. An employer who violates subdivisions (b) or (c) of Section 226 is also subject to additional civil penalties under Section 2699(f).

Employees incorporate the preceding sections herein. Throughout Employees’ employment, Second Amendment Sports, Inc. violated subdivisions (a), (b), and (c) of Section 226 by failing to issue wage statements, maintain wage statements, or produce upon Employees’ request either a duplicate of the itemized statements provided to Employees or a computer-generated record, that accurately show(s) all of the required information.

H. Failure to Pay Wages at Termination

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the

wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

Employees incorporate the preceding sections herein. Throughout Employees’ employment, Second Amendment Sports, Inc. failed to pay Employees minimum, overtime, and premium wages earned. These wages were owed and due to Employees at the time of their termination. Second Amendment Sports, Inc. did not provide full payment of these wages to Employees at the time of termination. Second Amendment Sports, Inc.’s failure to timely pay these wages at the time of termination, and failure to pay Employees’ continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

* * *

Pursuant to Section 2699.3, subdivision (b)(1), the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

I. Violation of Lead Exposure Standards

“Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.” Lab. Code 6407.

Among these rules, regulations, and orders is Title 8, Section 5198 of the California Code of Regulations, which was applicable to Employer and the Employees. Throughout Employees’ employment, Employer violated the following provisions of § 5198:

(c) Permissible Exposure Limit (PEL). (1) The employer shall assure that no employee is exposed to lead at an 8-hour time-weighted average concentration greater than 50 micrograms per cubic meter of air (50µg/M3). (2) If an employee is exposed to lead for more than 8 hours in any work day, the permissible exposure limit for that day, as a time-weighted average concentration (TWA), shall be reduced according to the following formula: Maximum permissible limit (in µg/M3) = 400 ÷ hours worked in the day.

Throughout Employees’ employment, Second Amendment Sports, Inc. failed to assure that Employees within and outside of Employer’s shooting range facilities were not exposed to the foregoing permissible exposure limits to lead during their workdays.

(d) Exposure Monitoring. (1) General. (2) Initial Determination. Each employer who has a workplace or work operation covered by this standard shall determine if any employee may be exposed to lead at or above the action level. (3) Basis of Initial Determination.

(A) The employer shall monitor employee exposures and shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations: 1. Any information, observations, or calculations which would indicate employee exposure to lead; 2. Any previous measurements of airborne lead; and 3. Any employee complaints of symptoms which may be attributable to exposure to lead.

...

(4) Positive Initial Determination and Initial Monitoring.

(A) Where a determination conducted under subsections (d)(2) and (d)(3) shows the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

...

(6) Frequency. (A) If initial monitoring reveals an employee's exposure to be above the permissible exposure limit, the employer shall repeat monitoring quarterly until at least two consecutive measurements, taken at least 7 days apart, are at or below the permissible exposure limit. Subsequent monitoring for that employee shall conform with the applicable provisions of subsections (d)(6)(B) or (C). (B) If initial monitoring or monitoring conducted in accordance with subsection (d)(6)(A) reveals an employee's exposure to be at or above the action level but no greater than the permissible exposure limit, the employer shall repeat monitoring at least every 6 months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided by subsection (d)(7). (C) Whenever initial monitoring or monitoring conducted in accordance with subsection (d)(6)(A) reveals an employee's exposure to be below the action level, further measurements are not required except as otherwise provided by subsection (d)(7).

Throughout Employees' employment, Second Amendment Sports, Inc. failed to perform adequate exposure monitoring as required by the foregoing provisions.

(7) Additional Monitoring. Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to lead, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to lead, additional monitoring in accordance with this subsection shall be conducted.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to perform adequate additional monitoring as required by the foregoing provisions. The Employer received complaints and learned of Employees' complaints and adverse health conditions arising from exposure to lead, and Employer has failed to conduct adequate additional monitoring and has failed to take adequate corrective action as required by the foregoing provisions.

(8) Employee Notification. (A) Within 5 working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure. (B) Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to notify Employees in writing of monitoring results regarding Employees' respective exposure, failed to inform Employees that conditions exceeded the permissible exposure limit, and failed to inform Employees of the corrective action taken or to be taken.

(e) Compliance. (1) Methods. (A) Where any employee is exposed to lead above the permissible exposure limit for more than 30 days per year, the employer shall implement engineering, work practice, and administrative controls to reduce and maintain employee exposure to lead except to the extent that the employer can demonstrate that such controls are not feasible. Where engineering, work practice, and administrative controls which can be instituted are not sufficient to reduce employee exposure to or below the permissible exposure limit, they shall nonetheless be used by the employer to reduce exposures to the lowest feasible level. (B) Where controls which can be instituted in accordance with subsection (e)(1)(A) are not sufficient to reduce and maintain employee exposure to or below the permissible exposure limit, the employer shall supplement these controls with respiratory protection, in conformance with subsection (f), to control employee exposure within the permissible exposure limit. (C) Where any

employee is exposed to lead above the permissible exposure limit, but for 30 days or less per year, the employer shall implement feasible engineering controls to reduce exposure to 150µg/M3, but thereafter may implement any combination of engineering, work practice, administrative and respiratory controls to reduce and maintain exposure to lead to or below the permissible exposure limit.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to implement adequate engineering, work practice, and administrative controls to reduce and maintain employee exposure to lead as required by the foregoing provisions.

(2) Compliance Program. (A) Where applicable, each employer shall establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit and interim levels solely by means of engineering and work practice controls in accordance with the implementation schedule in subsection (e)(1). (B) Written plans for these compliance programs shall include at least the following: 1. A description of each operation in which lead is emitted; e.g. machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices; 2. A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead; 3. A report of the technology considered in meeting the permissible exposure limit; 4. Air monitoring data which documents the source of lead emissions; 5. A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.; 6. A work practice program which includes items required under subsections (g), (h), and (i); 7. An administrative control schedule required by subsection (e)(5), if applicable; and 8. Other relevant information. ... (D) Written programs shall be revised and updated at least every 6 months to reflect the current status of the program.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit and interim levels as required by the foregoing provisions, and failed to revise and update their written programs at least every 6 months to reflect the current status of the program.

(4) Mechanical Ventilation. (A) When ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made at least every 3 months.

Measurements of the system's effectiveness in controlling exposure shall be made within 5 days of any change in production, process, or control which might result in a change in employee exposure to lead. (B) Recirculation of Air. If air from exhaust ventilation is recirculated into the workplace, the employer shall assure that: 1. The exhaust has a high efficiency filter with a reliable back-up filter; and 2. Controls are installed, operating, and maintained which monitor the concentration of lead in the return air and which, in case of failure, automatically prevent the recirculation of exhaust air. (5) Administrative Controls. If administrative controls are used as a means of reducing employees' TWA exposure to lead, the employer shall establish and implement a job rotation schedule which includes: (A) Name or identification number of each affected employee; (B) Duration and exposure levels at each job or work station where such affected employee is located; and (C) Any other information which may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to take measurements which demonstrate the effectiveness of its ventilation system(s) in controlling exposure, such as capture velocity, duct velocity, or static pressure, at least every 3 months. Employer also failed to ensure that exhaust ventilation recirculated into the workplace complied with the foregoing provisions.

(f) Respiratory Protection. (1) General. For employees who are required to use respirators by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during: (A) Work operations for which engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit; (B) Periods necessary to implement engineering or work practice controls. (C) Periods when an employee requests a respirator. (2) Respirator program. (A) The employer must implement a respiratory protection program in accordance with section 5144(c) (except (d)(1)(C)) through (m). (B) If an employee exhibits breathing difficulty during fit testing or respirator use, the employer must provide the employee with a medical examination in accordance with subsection (j)(3)(A)3. to determine whether or not the employee can use a respirator while performing the required duty. (3) Respirator Selection. (A) The employer shall select, and provide to employees, the appropriate respirators specified in Section 5144(d)(3)(A)1. (B) The employer shall provide a powered, air purifying respirator in lieu of the respirator specified in subsection (f)(3)(A) whenever: 1. An employee chooses to use this type of respirator; and 2. This respirator will provide adequate

protection to the employee. (C) The employer shall provide employees with full facepiece respirators instead of half mask respirators for protection against lead aerosols that cause eye or skin irritation at the use concentrations. (D) The employer shall provide HEPA filters for powered and non-powered air-purifying respirators.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to provide adequate respiratory protection to Employees as required by the foregoing provisions.

(g) Protective Work Clothing and Equipment. (1) Provisions and Use. If an employee is exposed to lead above the PEL, without regard to the use of respirators, or where the possibility of skin or eye irritation exists, the employer shall provide at no cost to the employee and assure that the employee uses appropriate protective work clothing and equipment such as, but not limited to: (A) Coveralls or similar full-body work clothing; (B) Gloves, hats, and shoes or disposable shoe coverlets; and (C) Face shields, vented goggles, or other appropriate protective equipment which complies with Article 10. (2) Cleaning and Replacement. (A) The employer shall provide the protective clothing required in subsection (g)(1), in a clean and dry condition at least weekly, and daily to employees whose exposure levels without regard to respirator use are over 150µg/M3 of lead on an 8-hour time-weighted average basis. (B) The employer shall provide for the cleaning, laundering, or disposal of protective clothing and equipment required by subsection (g)(1). (C) The employer shall repair or replace required protective clothing and equipment as needed to maintain their effectiveness. (D) The employer shall assure that all protective clothing is removed at the completion of a work shift and only in change rooms provided for that purpose as prescribed in subsection (i)(2). (E) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change room which prevents dispersion of lead outside the container. (F) The employer shall inform in writing any person who cleans or launders protective clothing or equipment of the potentially harmful effects of exposure to lead. (G) Labeling of contaminated protective clothing and equipment. 1. The employer shall ensure that labels of bags or containers of contaminated protective clothing and equipment include the following information:

DANGER: CLOTHING AND EQUIPMENT CONTAMINATED WITH LEAD. MAY DAMAGE FERTILITY OR THE UNBORN CHILD. CAUSES DAMAGE TO THE CENTRAL NERVOUS SYSTEM. DO NOT EAT, DRINK OR SMOKE WHEN HANDLING. DO NOT REMOVE DUST BY BLOWING OR

SHAKING. DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR FEDERAL REGULATIONS.

2. Prior to June 1, 2015, employers may include the following information on bags or containers of contaminated protective clothing and equipment in lieu of the labeling requirements in subsections (g)(2)(G)1. of this section:

CAUTION: CLOTHING CONTAMINATED WITH LEAD. DO NOT REMOVE DUST BY BLOWING OR SHAKING. DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE OR FEDERAL REGULATIONS.

(H) The employer shall prohibit the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to comply with the foregoing provisions regarding protective work clothing and equipment for Employees.

(h) Housekeeping. (1) Surfaces. All surfaces shall be maintained as free as practicable of accumulations of lead. (2) Cleaning Floors. (A) Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air. (B) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other equally effective methods have been tried and found not to be effective. ...

Throughout Employees' employment, Second Amendment Sports, Inc. failed to adequately clean floors and maintain all surfaces, including those within and outside shooting range facilities, free as practicable of accumulations of lead.

(i) Hygiene Facilities and Practices. (1) The employer shall assure that in areas where employees are exposed to lead above the PEL, without regard to the use of respirators, food or beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in change rooms, lunchrooms, and showers required under subsections (i)(2)-(i)(4). (2) Change Rooms. (A) The employer shall provide clean change rooms for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators. (B) The employer shall assure that change rooms are equipped with separate storage facilities for protective work clothing and equipment and for street clothes which prevent cross contamination. (3) Showers. (A) The employer shall assure that employees who work in areas where their

exposure to airborne lead is above the PEL, without regard to the use of respirators, shower at the end of the work shift. (B) The employer shall provide shower facilities in accordance with Section 3366(f). (C) The employer shall assure that employees who are required to shower pursuant to subsection (i)(3)(A) do not leave the work place wearing any clothing or equipment worn during the work shift. (4) Lunchrooms. (A) The employer shall provide readily accessible lunchroom facilities, in accordance with Section 3368, for employees who work in areas where their exposure to airborne lead is above the PEL, without regard to the use of respirators. (B) Lunchroom facilities shall have a temperature controlled, positive pressure, filtered air supply except that such facilities need not be under positive pressure if workplace operations produce no contamination by airborne lead. (C) The employer shall assure that employees who work in areas where their exposure to airborne lead is above the PEL, without regard to respirator use, wash their hands and face prior to eating, drinking, smoking or applying cosmetics. (D) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface lead dust has been removed by vacuuming, downdraft booth, or other cleaning method. (5) Lavatories. The employer shall provide an adequate number of lavatory facilities which comply with Section 3366.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to comply with the foregoing provisions concerning hygiene facilities and practices.

(j) Medical Surveillance. (1) General. (A) The employer shall institute a medical surveillance program for all employees who are or may be exposed at or above the action level for more than 30 days per year. (B) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician. (C) The employer shall provide the required medical surveillance including multiple physician review under subsection (j)(3)(C) without cost to employees and at a reasonable time and place.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to institute an adequate medical surveillance program for Employees in compliance with the foregoing provisions.

(k) Medical Removal Protection. (1) Temporary Removal Due to Elevated Blood Lead Levels. The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months,

whichever is longer) indicates that the employee's blood lead level is at or above 50 µg/100 g of whole blood....

(6) Medical Removal Protection Benefits.

(A) Provision of Medical Removal Protection Benefits. The employer shall provide to an employee up to eighteen (18) months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to this section. (B) Definition of Medical Removal Protection Benefits. For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to lead or otherwise limited.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to provide adequate medical removal protection benefits to Employees in compliance with the foregoing provisions. The Employer retaliated against Employee(s) for invoking his/their rights to Medical Removal Protection Benefits, discouraging others from speaking up or seeking similar protections.

(I) Employee Information and Training. (1) Training Program.

(A) Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation. (B) The employer shall institute a training program for and assure the participation of all employees who are subject to exposure to lead at or above the action level or for whom the possibility exists of skin or eye irritation from exposure to lead. (C) The employer shall provide initial training prior to the time of initial job assignment for those employees subsequently covered by this paragraph. (D) The training program shall be repeated at least annually for each employee covered by subsection (I)(1)(C). (E) The employer shall assure that each employee covered by subsection (I)(1)(C) is informed of the following: 1. The content of this standard and its appendices; 2. The specific nature of the operations which could result in exposure to lead above the action level; 3. The purpose, proper selection, fitting, use, and limitations of respirators; 4. The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproduction effects on both males and females); 5. The engineering controls and work practices associated with the employee's job assignment; 6. The contents of any compliance plan in effect; and 7. Instructions to employees that

chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician. (2) Access to Information and Training Materials. (A) The employer shall make a copy of this standard and its appendices readily available to all affected employees including employees exposed below the action level.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to provide the necessary training to Employees as required by the foregoing provisions.

(n) Recordkeeping. (1) Exposure Monitoring. (A) The employer shall establish and maintain an accurate record of all monitoring required in subsection (d). (B) This record shall include: 1. The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable; 2. A description of the sampling and analytical methods used and evidence of their accuracy; 3. The type of respiratory protective devices worn, if any; 4. Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and 5. The environmental variables that could affect the measurement of employee exposure. (C) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(2) Medical Surveillance. (A) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by subsection (j). (B) This record shall include: 1. The name, social security number, and description of the duties of the employee; 2. A copy of the physician's written opinions; 3. Results of any monitoring of exposure to airborne lead done for that employee and the representative exposure level supplied to the physician; and 4. Any employee medical complaints related to exposure to lead. (C) The employer shall keep, or assure that the examining physician keeps, the following medical records: 1. A copy of the medical examination results including medical and work history required under subsection (j). 2. A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information. 3. A copy of the results of biological monitoring. (D) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years, whichever is longer.

(3) Medical Removals. (A) The employer shall establish and maintain an accurate record for each employee removed from

current exposure to lead pursuant to subsection (k). (B) Each record shall include: 1. The name and social security number of the employee; 2. The date on each occasion that the employee was removed from current exposure to lead as well as the corresponding date on which the employee was returned to his or her former job status; 3. A brief explanation of how each removal was or is being accomplished; and 4. A statement with respect to each removal indicating whether or not the reason for the removal was an elevated blood lead level. (C) The employer shall maintain each medical removal record for at least the duration of an employee's employment.

Throughout Employees' employment, Second Amendment Sports, Inc. failed to keep all of the records required by the foregoing provisions.

Cal. Code Regs., tit. 8, § 5198.

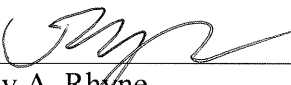
Employer is subject to additional civil penalties as provided by law.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,

LEX OPUS



Jeremy A. Rhyne