

ZACHARY CROSNER (SBN 272295)
zach@crosnerlegal.com
MICHAEL CROSNER (SBN 41294)
mike@crosnerlegal.com
BLAKE R. JONES (SBN 211221)
blake@crosnerlegal.com
CROSNER LEGAL, PC
433 N. Camden Dr., Ste. 400
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

Attorneys for Plaintiff
NOAH HODGIN

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR ORANGE COUNTY**

NOAH HODGIN, on behalf of all others
similarly aggrieved,

Plaintiff,
vs.

CLUBCORP CENTER CLUB, INC., a
California corporation; CLUBCORP USA, INC.
and DOES 1-00, Inclusive,

Defendants.

CASE NO. 30-2020-01156551-CU-OE-CXC

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

Assigned for all purposes to:

Judge Glenda Sanders

Dept: CX101

1 Plaintiff NOAH HODGIN, an individual on behalf of himself and all other aggrieved employees
2 similarly situated, hereby files this Complaint against Defendant CLUBCORP CENTER CLUB,
3 INC. and Defendant CLUBCORP USA, INC., and DOES 1 through 100. All named Defendants
4 and Doe Defendants are hereinafter collectively referred to as “Defendants” or “Defendants.”
5 Plaintiff is informed and believes, and on the basis of that information and belief, allege as
6 follows:

7 THE PARTIES

8 1. Plaintiff NOAH HODGIN is and at relevant times was, an individual domiciled in
9 the State of California and a citizen of the State of California who worked as a non-exempt server
10 for Defendants in the State of California.

11 2. Defendant CLUBCORP CENTER CLUB, INC. is a Delaware Corporation that, at
12 all relevant times, was authorized to do business within the State of California and is doing
13 business in the State of California. Defendant CLUBCORP CENTER CLUB, INC. owns and
14 operates a private city club called Center Club Orange County in Costa Mesa, California.

15 3. Defendant CLUBCORP USA, INC. is a Delaware Corporation that, at all relevant
16 times, was authorized to do business within the State of California and is doing business in the
17 State of California. Defendant CLUBCORP USA, INC. is the largest owner and operator of more
18 than 200 private golf and country clubs, city clubs, sports clubs, alumni clubs, and stadium clubs
19 in markets all across the country.

20 4. The true names and capacities of the DOE Defendants sued herein as DOES 1
21 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such
22 Defendants by said fictitious names. Each of the Defendants designated herein as a DOE is
23 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to
24 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
25 identities become known.

26 4. Plaintiff is informed and believes that, at all relevant times, Defendants operated as
27 single integrated enterprise. Among other things, Plaintiff is informed and believes that: (1) there
28 is common ownership in, and financial control, in the Defendant clubs, including but not limited

to Center Club Orange County; (2) Defendants utilize common management, who have control over the day-to-day operations and employment matters, including the power to hire and fire, set schedules, issue employee policies, and determine rates of compensation across its clubs in California, including but not limited to Center Club Orange County; (3) Defendants utilize the same policies and procedures for all California non-exempt employees, including issuing the same employee handbooks and other form agreements; (4) Defendants use at least some of the same Human Resources personnel and attorneys to oversee employment matters; and, (6) Defendants share employees.

5. Plaintiff is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

6. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

JURISDICTION AND VENUE

7. This court possesses original subject matter jurisdiction over this matter. Venue is proper in Orange County, California, because Defendants do business in Orange County, California, and some of the complained of conduct occurred in this judicial district.

1 FACTUAL ALLEGATIONS

2 8. During the one-year and sixty-five day period preceding filing of this complaint,
3 Plaintiff and each of the similarly situated aggrieved employees worked for Defendants in the
4 State of California as an non-exempt employee. Defendants at all times exercised control over
5 Plaintiff and each of the similarly situated aggrieved employees, and suffered and/or permitted
6 them to work.

7 9. On approximately March 19, 2019, Plaintiff began working for Defendants as a
8 server at its Costa Mesa location, Center Club Orange County, and continued working in that
9 capacity until June 28, 2019, when his employment ended. During his employment, Plaintiff was
10 classified as a non-exempt employee at all times.

11 10. Plaintiff was typically scheduled to work five shifts per week, with each shift on
12 average lasting for 4.5 to 5 hours per day. Plaintiff was at times required by Defendants to extend
13 his shifts in excess of 8 or even 10 hours.

14 11. At Center Club Orange County and other ClubCorp locations in California,
15 Defendants have routinely added a 20-22% service charge to its guest and private party bills.

16 12. These service charges have been in the form of automatic charges which
17 customers are required to pay, and which reasonably appear to be gratuities for the service staff.

18 13. It is typical and customary in the hospitality industry that establishments impose
19 gratuity charges in the range of 18-22% of the food and beverage bill.

20 14. Thus, when customers have paid these charges, it is reasonable for them to have
21 believed they were gratuities to be paid to the service staff.

22 15. Indeed, because of the way these charges are depicted to customers, and the
23 custom in the food and beverage industry that gratuities in the range of 18-22% are paid for food
24 and beverage service, customers have paid these charges reasonably believing they were to be
25 remitted to the service staff.

26 16. However, Defendants have not remitted the total proceeds of these gratuities to the
27 non-managerial employees who serve the food and beverages.

28 17. Instead, Defendants have had a policy and practice of retaining for itself a portion

1 of these gratuities and/or using a portion of these gratuities to pay managers or other non-service
2 employees.

3 18. Defendants also had a policy and practice of paying a portion of these
4 gratuities to non-service employees and thereafter making wage deductions from this portion
5 of gratuities paid to non-service employees, including Plaintiff.

6 20. Defendants also used this portion of the gratuities paid to non-service
7 employees, including Plaintiff, as a direct or indirect credit against their wages for purposing
8 of meeting their minimum wage obligations.

9 21. As a result, Plaintiff and the similarly situated aggrieved employees have not
10 received the total proceeds of the gratuities, to which they are entitled under California law.

11 22. These gratuities were non-discretionary renumerations in that the gratuities were
12 based on a percentage of the total bill, yet Defendants did not incorporate these gratuities into
13 Plaintiff's regular rate of pay for purposes of calculating overtime as well as for purposes of
14 calculating his reporting time pay.

15 23. As a result of the foregoing, Plaintiff and the similarly situated aggrieved
16 employees were not properly compensated minimum wages and overtime wages, and were
17 subjected to unlawful deductions from their wages.

18 24. Plaintiff was also required to perform some of his work "off-the-clock." For
19 example, he was required to remain at work longer than his scheduled shift and would not be
20 compensated by Defendants for all of this time worked.

21 25. Plaintiff's earned wages were unlawfully deducted from his paychecks by
22 Defendants. For example, Defendants also routinely deducted parking fees from his earned wages
23 on his biweekly payments. Additionally, as described above, Defendants unlawfully made wage
24 deductions from the portion of the gratuities paid to non-managerial employees.

25 26. Plaintiff was required to be on his feet all day and was not provided any seating,
26 even though his position would have permitted it.

27 27. Plaintiff was required to work through his rest periods due to the nature of the
28 business, and did not always receive second rest periods on shifts in excess of 6 hours or a third

1 rest period when working shifts in excess of 10 hours.

2 28. Plaintiff similarly did not always receive his first meal period by the end of his
3 fifth hour of work due to the nature of the job. Plaintiff was also occasionally interrupted during
4 his meal periods and rest breaks and did not receive premium pay on these missed, late or
5 interrupted meal and rest breaks.

6 29. Plaintiff was also forced to comply with Defendants' invalid meal break waiver
7 agreement, which required him to waive meal periods for shifts less than 5 hours, and resulted in
8 him not always receiving proper meal periods.

9 30. Plaintiff was also never instructed to take nor provided with a second period on
10 shifts in excess of 10 hours and did not receive premium pay for these missed second meal
11 periods.

12 31. Plaintiff's employment with Defendants ended on June 28, 2019, yet Plaintiff's
13 final payroll check, dated July 16, 2019, was not timely provided to Plaintiff. Defendants failed to
14 pay Plaintiff for all hours worked during his employment and upon the separation of employment,
15 including but not limited to failing to pay Plaintiff for his off-the-clock work, paying Plaintiff an
16 hourly rate of less than minimum wage, and failing to incorporate the gratuities into the regular
17 rate of pay for calculating overtime and reporting time pay.

18 32. During his employment, Plaintiff failed to receive accurate wage statements in
19 compliance with Labor Code section 226. Among other things, Plaintiff's paystubs did not
20 include: (1) the correct total hours that Plaintiff worked during each pay period; (2) the correct
21 overtime rate; and (3) the correct total net wages.

22 33. Plaintiff is informed and believes that Defendants engaged in these same unlawful
23 practices with regard to all of the similarly situated aggrieved employees.

24 34. In sum, Plaintiff and the similarly situated aggrieved employees did not receive all
25 wages for all hours worked because of Defendants' uniform policies and practices concerning the
26 recording, calculation and payment of minimum and overtime wages, and because of being
27 required to work off-the-clock. Plaintiff and the similarly situated aggrieved employees did not
28 receive all gratuities owed to him as a result of Defendants' policy and practice of paying a

1 portion of these gratuities to non-service employees and thereafter making wage deductions
2 from this portion of gratuities paid to non-service employees, including Plaintiff. Plaintiff and
3 similarly situated aggrieved employees were not paid for all hours worked and/or at the correct
4 rates of pay. Defendants also did not provide Plaintiff and the similarly situated aggrieved
5 employees with timely, duty-free and uninterrupted meal and rest periods, or with compensation
6 in lieu thereof, as required by California law. Additionally, Defendants unlawfully deducted
7 earned wages from Plaintiff and the similarly situated aggrieved employees, including but not
8 limited to parking expenses and gratuities earned. Defendants failed to provide accurate, itemized
9 wage statements to Plaintiff and the similarly situated aggrieved employees, and failed to pay
10 Plaintiff and the similarly situated aggrieved employees all wages due in a timely fashion during
11 in employment and upon separation of employment.

12 35. Plaintiff brings his complaint under the Private Attorneys General Act of 2004,
13 Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of
14 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
15 employed by Defendants in the State of California as a non-exempt employee. This action is
16 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

17 36. During the period beginning one-year period preceding the filing of the required
18 PAGA notice with the Labor Workforce and Development Agency, and continuing through the
19 present, as alleged herein, Defendants violated Labor Code sections 201-203, 204, 216, 221-224,
20 226, 226.7, 245-248.5, 351, 353, 510, 512, 1174, 1194, 1197, 1198, 1199, and all relevant
21 sections of the applicable Wage Orders as to Plaintiff and all other similarly aggrieved employees
22 employed by Defendants in any non-exempt position, however titled. These violations subject
23 Defendants to civil penalties as set forth in the foregoing statutes as well as other provisions
24 of the Labor Code, including without limitation Labor Code sections 203, 256, 210, 1174.5,
25 1197.1 and 2699.

26 **FIRST CAUSE OF ACTION**

27 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
28 **LABOR CODE SECTIONS 2698, ET SEQ.**

1 36. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

2 37. Labor Code Section 351 prohibits employers and their agents from sharing in
3 or keeping any portion of a gratuity left for or given to one or more employees by a patron.
4 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from
5 using gratuities as direct or indirect credits against an employee's wages. California law
6 further states that gratuities are the sole property of the employee or employees to whom they
7 are given. Defendants' conduct, as set forth above, in failing to remit non-managerial
8 employees the total proceeds of gratuities added to guest and private party bills constitutes a
9 violation of California Labor Code Section 351. Defendants conduct in making wage
10 deductions from the portion of the gratuities paid to non-managerial employees, and from
11 using gratuities as direct or indirect credits against a non-managerial employees' wages, is a
12 violation of California Labor Code Section 351. As a result of Defendants' conduct, Plaintiff
13 and the similarly situated aggrieved employees suffered injury in fact and lost money and
14 property, including the loss of gratuities to which they were entitled. These violations subject
15 Defendants to civil penalties under the foregoing Labor Code sections and other applicable Labor
16 Code sections, including without limitation Labor Code section 2699. Each violation of each
17 Labor Code section, for each aggrieved employee, results in a separate civil penalty.

18 38. California law provides employees in California must be paid for all hours worked,
19 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
20 California law also provides employees in California must be paid overtime, equal to 1.5 times
21 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day.
22 Plaintiff and similarly aggrieved employees regularly worked hours, including overtime hours, for
23 which they were not compensated by Defendants as required by California law. Plaintiff and the
24 similarly situated aggrieved employees did not receive all wages for all hours worked because of
25 Defendants' uniform policies and practices concerning the recording, calculation and payment of
26 minimum and overtime wages. Plaintiff and similarly situated aggrieved employees were not paid
27 for all hours worked and/or at the correct rates of pay. Defendants also required Plaintiff and
28 similarly situated aggrieved employees to perform work off-the-clock. Defendants also did not

1 provide Plaintiff and the similarly situated aggrieved employees with timely, duty-free and
2 uninterrupted meal and rest periods, or with compensation in lieu thereof, as required by
3 California law. Additionally, Defendants failed to provide accurate, itemized wage statements to
4 Plaintiff and the similarly situated aggrieved employees, and failed to pay Plaintiff and the
5 similarly situated aggrieved employees all wages due in a timely fashion during in employment
6 and upon separation of employment. As a result, Defendants failed to pay Plaintiff and similarly
7 aggrieved employees for all hours worked at a rate no less than the prevailing minimum wage,
8 thereby violating California minimum wage laws, including but not limited to, Labor Code
9 sections 1194-1199, and Wage Order 5-2001, section 7. These violations subject Defendants to
10 civil penalties under the foregoing Labor Code sections and other applicable Labor Code sections,
11 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
12 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
13 penalty.

14 39. Under the Labor Code and IWC Wage Orders, Defendants was required to provide
15 Plaintiff and similarly aggrieved employees with one 30-minute meal break free from all duties
16 for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all
17 shifts longer than 10 hours. Meal periods can be waived, but only under the following
18 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
19 than six (6) hours, the required meal period may be waived by mutual consent of the employer
20 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
21 more than twelve (12) hours, the required second meal period may be waived by mutual consent
22 of the employer and employee, but only if the first meal period was not waived. Employers
23 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
24 meal period for shifts over five hours (see above), and (2) to record having done so. If the
25 employer fails to properly record a valid meal period, it is presumed no meal period was
26 provided.

27 40. Plaintiff and similarly situated aggrieved employees regularly worked periods of
28 more than five and ten hours in a workday without being provided proper mandatory thirty-

1 minute, duty-free meal periods. Upon information and belief, Defendants failed to maintain a
2 company meal period policy compliant with California law. Defendants also failed to maintain a
3 company meal break waiver agreement compliant with California law. Plaintiff and similarly
4 situated aggrieved employees were occasionally unable to take timely, thirty-minute
5 uninterrupted meal periods, particularly second meal periods. They were unable to avail
6 themselves of such breaks for various reasons, including, the pressures from their workloads and
7 the lack of relief workers available, commentary from superiors or no breaks at all. Defendants
8 regularly and routinely failed to provide Plaintiff and other similarly situated aggrieved
9 employees with a second meal period regardless of the number of hours they worked. Per
10 Defendants' illegal meal period policy/practice, Plaintiff and similarly situated aggrieved
11 employees were not always relieved of their duties for purposes of taking meal periods.
12 Defendants also failed to pay Plaintiff and similarly situated aggrieved employees an additional
13 hour of wages at their regular rates of pay for each workday a meal period was not provided.

14 41. Defendants failed to provide Plaintiff and similarly aggrieved employees all
15 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendants
16 employed policies and procedures that ensured Plaintiff and similarly aggrieved employees would
17 not receive all legally required rest periods, as Defendants did not authorize and permit all
18 required rest periods in strict accordance to, and in compliance with, the timing requirements of
19 all applicable Wage Orders. Defendants similarly employed policies and procedures that
20 rendered rest breaks non-compliant with the requirements of California law by, inter alia, failing
21 to relieve Plaintiff and similarly aggrieved employees of all duties and all employer control.
22 Given Plaintiff and similarly aggrieved employees' work schedules, they were typically entitled
23 to at least two rest periods per workday, which they were routinely denied. Defendants further
24 employed policies and procedures ensuring Plaintiff and similarly aggrieved employees did not
25 receive premium wages to compensate them for workdays they did not receive all legally required
26 and fully compliant rest periods.

27 42. "Reporting time pay" is a form of wages that compensate employees who are
28 scheduled to report to work but who are not put to work or furnished with less than half of

1 their usual or scheduled day's work because of inadequate scheduling or lack of proper
2 notice by the employer. The IWC's purpose in adopting reporting time pay requirements was
3 two-fold: "to compensate employees" and "encourag[e] proper notice and scheduling". *Id.* at
4 pp. 1111-1112. Reporting time pay constitutes wages. (*Murphy v. Kenneth Cole Productions,*
5 *Inc.* (2007) 40 Cal. 4th 1094). Defendants violated California's reporting time pay laws by,
6 among other things, failing to correctly calculate, or record at all, the total number of hours
7 worked by Plaintiff and other similarly situated aggrieved employees and not paying proper
8 regula rates for any reporting time pay worked and/or paid. For example, the gratuities paid
9 to Plaintiff and the similarly situated aggrieved employees were non-discretionary
10 renumerations in that the gratuities were based on a percentage of the total bill, yet
11 Defendants did not incorporate these gratuities into Plaintiff's and the similarly situated
12 aggrieved employees' regular rate of pay for purposes of calculating reporting time
13 pay. These violations subject Defendants to civil penalties under the Labor Code, including
14 without limitation Labor Code sections 203, 226, 2699 and the IWC Wage Order 5-2001, Section
15 5. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
16 employee, results in a separate civil penalty.

17 43. California law requires employers to pay overtime equal to one and one-half times
18 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
19 hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order 5-2001,
20 §3. Defendants must pay overtime equal to double the regular hourly rate of pay for each hour
21 worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8)
22 hours on the seventh consecutive day or work in a work week. *Ibid.* Defendants violated
23 California's overtime laws by, among other things, failing to correctly calculate, or record at all,
24 the total number of hours worked by Plaintiff and other similarly situated aggrieved employees
25 and not paying proper overtime rates for any overtime worked. For example, the gratuities paid to
26 Plaintiff were non-discretionary renumerations in that the gratuities were based on a percentage of
27 the total bill, yet Defendants did not incorporate these gratuities into Plaintiff's and the similarly
28 situated aggrieved employees' regular rate of pay for purposes of calculating overtime as well as

1 for purposes of calculating his reporting time pay. Additionally, on information and belief,
2 Plaintiff alleges that similarly situated aggrieved employees were required to perform off-the-
3 clock work on a routine basis.

4 44. Labor Code section 1197 states the California requirement that employees must be
5 paid at least the minimum wage fixed by the Commission, and any payment of less than the
6 minimum wage is unlawful. The minimum wage standard applies to each hour employees
7 worked for which they were not paid. Therefore, an employer's failure to pay for any particular
8 hour worked by an employee is unlawful even if averaging an employee's total pay over all hours
9 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
10 *Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. The compensation scheme instituted by
11 Defendants resulted in pay periods during which Plaintiff and similarly aggrieved employees
12 were denied the minimum wage for all hours worked. Defendants used the portion of the
13 gratuities paid to the non-service aggrieved employees, including Plaintiff, as a direct or indirect
14 credit against their wages for purposing of meeting their minimum wage obligations, resulting in
15 minimum wage violations to Plaintiff and the aggrieved employees. Defendants' failure to
16 separately so compensate resulted in Plaintiff and similarly aggrieved employees not being paid
17 for all hours worked causing minimum wage violations. In addition, Defendants required Plaintiff
18 and similarly aggrieved employees to clock out for meal breaks that they were required to work
19 through and perform other off-the-clock work. These minimum wage violations subject Plaintiff
20 and the aggrieved employees to civil penalties under Labor Code sections 558, 558.1, 1197.1 and
21 Section 20 of all applicable wage orders. Each violation of each Labor Code section and Wage
22 Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay
23 period during which the referenced statutes and Wage Order provisions were violated.

24 45. California law provides that, at the time of each payment of wages, the employer
25 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
26 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
27 employee is being paid, the employee's name and last four digits of their social security number,
28 the name and address of the legal entity that it is the employer, and all applicable hourly rates in

1 effect during the pay period and all hours worked at each rate. Defendants knowingly and
2 intentionally failed to provide Plaintiff and other aggrieved employees with proper, itemized
3 wage statements as the wage statements provided by Defendants do not accurately reflect, inter
4 alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in
5 effect during each pay period and all hours worked at each applicable hourly rate. This is a result
6 of, inter alia, Defendants failure to compensate Plaintiff and other similarly situated aggrieved
7 employees for off-the-clock work and failed to incorporate all non-discretionary renumerations
8 into overtime and reporting time pay. Accordingly, Defendants has violated Labor Code section
9 226 as to Plaintiff and all similarly aggrieved employees. These violations subject Defendants to
10 civil penalties under the Labor Code, including without limitation Labor Code sections 226 and
11 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
12 employee, results in a separate civil penalty.

13 46. California law requires employers to keep “accurate and complete” payroll records
14 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
15 Order 5-2001, section 7, similarly requires employers to keep time records showing, inter alia,
16 when the employees begin and end each work period and reflecting the times during which all
17 owed meal periods are provided each day. At all relevant times, Defendants has failed, and
18 continues to fail, to keep the required time records, as Defendants did not keep records of the true
19 hours worked by Plaintiff and similarly aggrieved employees by virtue of Defendants’ policy and
20 practices of requiring employees to work off-the-clock. Defendants’ failure to keep “accurate and
21 complete” payroll records for Plaintiff and other similarly aggrieved employees violates Labor
22 Code sections 1174, 1198-99, and Wage Order 5-2001, section 7. These violations subject
23 Defendants to civil penalties under the Labor Code, including without limitation sections 1174.5
24 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
25 aggrieved employee, results in a separate civil penalty.

26 47. California law requires employers to keep “accurate records” of all gratuities
27 received, whether received directly from the employee or indirectly by means of deductions from
28 the wages of the employee or otherwise. At all relevant times, Defendants have failed, and

1 continue to fail, to keep the required records of gratuities. Defendants' failure to keep "accurate
2 records" for Plaintiff and other similarly aggrieved employees violates Labor Code section 353.
3 These violations subject Defendants to civil penalties under the Labor Code, including without
4 limitation sections 2699. Each violation results in a separate civil penalty, for each aggrieved
5 employee for each pay period during which the statutory provisions were violated.

6 48. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
7 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
8 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
9 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants' violations with
10 respect to minimum wages and/or overtime wages, as alleged herein, result in separate violations
11 of Labor Code sections 1198 and 1199, and subject Defendants to civil penalties under the Labor
12 Code, including without limitation Labor Code sections 1197.1 and 2699. Each violation of each
13 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
14 civil penalty.

15 49. California Labor Code section 204 requires an employer to pay employees all
16 wages due and payable at least twice each calendar month. Defendants failed to comply with
17 Labor Code section 204 by failing to timely pay twice during each calendar month all wages due
18 and payable to Plaintiff and other similarly aggrieved employees. Defendants' violations of Labor
19 Code section 204 subject Defendants to civil penalties, including but not limited to the penalties
20 set forth in California Labor Code sections 210 and 2699. Each violation results in a separate civil
21 penalty, for each aggrieved employee for each pay period during which the statutory provisions
22 were violated.

23 50. The California Labor Code Section 1198 provides that employees shall be
24 provided with suitable seats when the nature of the work reasonably permits the use of seats and
25 when they are not engaged in the active work duties that would not permit them to be seated.
26 Defendants' failure, inter alia, to provide any seating for Plaintiff and similarly aggrieved
27 employees constitutes violations of set the Labor Code and Wage Orders. Under Labor Code
28 Section 1198, Plaintiff and the similarly situated aggrieved employees who no longer are

1 employed with Defendants are entitled to recover the civil penalty is \$100 for each aggrieved
2 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
3 period for each subsequent violation for the 12 months prior to filing a lawsuit, plus attorney's
4 fees and cost.

5 51. California Labor Code Section 221 provides that it shall be unlawful for any
6 employer to collect or receive from an employee any part of wages theretofore paid by said
7 employer to said employee. While Labor Code Section 224 provides some exceptions to this rule,
8 Section 224 also explicitly states that these exceptions do not apply to deductions from the
9 standard wage pursuant to a wage agreement or statute. As described above, Defendants
10 unlawfully made wage deductions from the portion of the gratuities paid to non-managerial
11 employees. Defendants also routinely deducted parking fees from his earned wages on his
12 biweekly payments. These violations subject Defendants to civil penalties under the Labor Code,
13 including without limitation sections 203 and 2699. Each violation results in a separate civil
14 penalty, for each aggrieved employee for each pay period during which the statutory provisions
15 were violated.

16 52. Labor Code section 201 requires employers to pay all wages earned and unpaid at
17 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
18 provisions with respect to employees who resign. For all aggrieved employees no longer
19 employed by Defendants, Defendants still has not paid such aggrieved employees all wages
20 earned and unpaid at the time of discharge, in that upon information and belief, Defendants
21 maintains a policy of not providing former employees their final pay until the current pay period
22 or the following pay period. Defendants also has not paid Plaintiff and the similarly situated
23 aggrieved employees all wages earned and unpaid at the time of discharge, in that, inter alia,
24 Defendants did not compensate them for off-the-clock work, failed to incorporate all non-
25 discretionary remunerations into overtime and reporting time pay, and unlawfully deducted wages
26 owed. These violations subject Defendants to civil penalties under the Labor Code, including
27 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate
28 civil penalty, for each aggrieved employee for each pay period during which the statutory

1 provisions were violated.

2 53. Plaintiff complied with the procedures for bringing suit specified in Labor Code
3 sections 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and
4 Workforce Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov
5 on March 25, 2020, and via certified mail to Defendants on March 25, 2020, of the specific
6 provisions of the Labor Code and Wage Orders allegedly violated, including the facts and
7 theories to support the alleged violations.

8 54. Under Labor Code section 2699.3, the LWDA must give written notice by
9 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
10 date of the complainant's written notice. As of the date of this Complaint, the LWDA has not
11 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
12 himself and other similarly aggrieved employees. As of the date of this Complaint, Defendants
13 has not responded to Plaintiff's PAGA notices in an attempt to cure. Accordingly, Plaintiff
14 has exhausted all administrative remedies required by law.

15 PRAYER

16 WHEREFORE, Plaintiff prays for judgment against each Defendants, jointly and
17 severally, as follows:

- 18 1. For civil penalties according to proof;
- 19 2. For reasonable attorney's fees and costs of suit; and
- 20 3. For such other and further relief as the Court deems just and proper.

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23 Dated: August 24, 2020

CROSNER LEGAL, P.C.

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25 _____
26 Zachary Crosner
27 Blake Jones
28 Michael Crosner
Attorneys for Plaintiff NOAH HODGIN

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DEMAND FOR JURY TRIAL

Plaintiff NOAH HODGIN demands a trial by jury on all claims so triable.

Dated: August 24, 2020

CROSNER LEGAL, P.C.



Zachary Crosner
Blake Jones
Michael Crosner
Attorneys for Plaintiff NOAH HODGIN