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*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

ANDY GARCIA, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

vs.

GREAT WOLF RESORTS HOLDINGS INC.,
CENTERBRIDGE PARTNERS LP, and THE
BLACKSTONE GROUP, INC.,

Defendant.

Case No. 30-2020-01141083-CU-OE-CXC

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

Assigned for all purposes to:

Judge William Claster

Dept: Cx104

1 Plaintiff Andy Garcia (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action on behalf of the State of California against
5 Defendants Great Wolf Resorts Holdings, Inc., Centerbridge Partners, L.P., and The Blackstone
6 Group, Inc. (collectively “Defendants”) for their systematic violations of California labor law with
7 respect to Defendants’ non-exempt hourly employees in California (the “Aggrieved Employees”).

8 2. Defendants impose gratuities on the sale of food and beverages, but fail to distribute
9 the total proceeds of those gratuities to non-managerial service employees as required by California
10 law. This conduct violates California Labor Code § 351.

11 3. Defendants maintain a longstanding policy and practice of failing to properly
12 compensate non-exempt employees for work performed during meal periods, for work performed
13 while “off-the-clock,” and for missed meal and rest periods. These policies deny Plaintiff and
14 Aggrieved Employees payment for all hours worked, including overtime, and deny Plaintiff and
15 Aggrieved Employees meal and rest periods that comply with California law.

16 4. Defendants violate California law by knowingly and willfully requiring Plaintiff and
17 Aggrieved Employees to perform work and/or remain on duty during meal and rest periods,
18 subjecting them to interruption during those times. Defendants require Aggrieved Employees to
19 manually clock out for their unpaid meal periods, even though Aggrieved Employees remain on duty
20 and are continuously subject to interruption during that time.

21 5. Plaintiff and Aggrieved Employees bring this claim to challenge Defendants’ policies
22 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees overtime wages; (2) failing to
23 pay Plaintiff and Aggrieved Employees all tip wages owed from gratuity payments; (3) failing to
24 authorize and permit Plaintiff and Aggrieved Employees to take meal and rest breaks to which they
25 are entitled by law; (4) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
26 (5) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; (6)
27

1 failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation;
2 and (7) failing to remit the total proceeds from mandatory service fee surcharges to non-managerial
3 service workers like the Aggrieved Employees.

4 **PARTIES**

5 6. Plaintiff Andy Garcia is an individual over the age of eighteen, and at all times relevant
6 to this Complaint was a resident of the State of California, County of Orange. Plaintiff was employed
7 as a server for Defendants at Great Lodge Water Park in Garden Grove, California beginning
8 approximately February 2018 to present.

9 7. Plaintiff is informed, believes, and thereon alleges that Defendant Great Wolf Resorts
10 Holdings Inc. is a Delaware corporation with its principal place of business in Madison, Wisconsin,
11 and is registered to do business in California. Defendant may be served with process by serving its
12 registered agent, Cogency Global Inc., 1325 J Street, Suite 1550, Sacramento, California 95814.

13 8. Plaintiff is informed, believes, and thereon alleges that Defendant Centerbridge
14 Partners LP is a Delaware limited partnership with its principal place of business in New York, New
15 York, and is registered to do business in California. Defendant may be served with process by serving
16 its registered agent, C T Corporation Systems, 818 West Seventh Street, Suite 930, Los Angeles,
17 California 90017.

18 9. Plaintiff is informed, believes, and thereon alleges that Defendant The Blackstone
19 Group Inc. is a Delaware corporation. Defendant may be served with process by serving its registered
20 agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington,
21 Delaware 19801.

22 10. Upon information and belief, Defendants have not filed statements designating a
23 principal office in California.

24 11. Upon information and belief, Defendants Centerbridge Partners LP and The Blackstone
25 Group Inc. own, operate, and manage, either in whole or in part, Defendant Great Wolf Resorts
26 Holdings, Inc., and therein exercise control over Plaintiff and Aggrieved Employees with respect to
27

1 their employment. Defendants jointly operate the Great Wolf Resorts chain of indoor water parks
2 and resorts throughout the country, including in California. Defendants employ Plaintiff and
3 Aggrieved Employees among other hourly employees, throughout these water parks and resorts.

4 12. Plaintiff is informed, believes, and thereon alleges that at all times mentioned in this
5 Complaint, Defendants were the agents and employees of their co-defendants and in doing the things
6 alleged in this Complaint were acting within the course and scope of such agency and employment.

7 13. Plaintiff is informed and believes that each and every one of the acts and omissions
8 alleged herein were performed by, and/or attributable to, Defendants, each acting as agents and/or
9 employees, and/or under the direction and control of each of the other, and that said acts and failures
10 to act were within the course and scope of said agency, employment and/or direction and control.

11 14. As employers of Plaintiff and Aggrieved Employees throughout the relevant time
12 periods, Defendants, each of them, are solely, jointly, and severally liable for penalties for violating
13 the Labor Code with respect to the employment of Plaintiff and Aggrieved Employees.

14 15. Throughout this Complaint, any reference to “Defendant” or “Defendants” is intended
15 to refer to Defendants Great Wolf Resorts Holdings Inc., Centerbridge Partners LP, and The
16 Blackstone Group Inc. jointly.

17 16. At all material times, Defendants have done business under the laws of California, have
18 had places of business in California, including in this County, and have employed Aggrieved
19 Employees in this County and elsewhere in California. Defendants are “person[s]” as defined in
20 Labor Code § 18 and “employer[s]” as that term is used in the Labor Code and the IWC Wage Orders
21 regulating wages, hours, and working conditions.

22 **SUBJECT MATTER JURISDICTION AND VENUE**

23 17. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
24 The Court also has jurisdiction over Defendants because Defendants do business in the State of
25 California, are authorized to do business in California, and are registered with the California
26 Secretary of State.

18. Defendants operate multiple indoor water parks and resorts, and employ aggrieved employees in California.

19. Venue is proper in this county because Defendants conduct business, employ Aggrieved Employees, and have a jobsite in this county. Plaintiff is informed, believes, and thereon alleges that events giving rise to these causes of action occurred in this county. Further, Defendants are not California residents and have not filed statements designating a principal office in California, and venue is therefore proper in any county in the State including this county. *Easton v. Sup. Ct.*, 12 Cal. App. 3d 243, 246-47, 90 Cal. Rptr. 642 (1970).

FACTUAL ALLEGATIONS

20. Defendants owns, operate, and manage a chain of indoor water parks and resorts throughout the United States and California that operate under the Great Wolf Lodge brand. Defendants employs hundreds of hourly non-exempt workers similarly situated to Plaintiff across these facilities.

21. Plaintiff works at Great Wolf Lodge Waterpark in Garden Grove, California as a server. Plaintiff is paid at an hourly rate of \$20 and is generally scheduled to work 8 hours per day and 40 hours per week; however, in actuality, Plaintiff typically works hours beyond the scheduled shift.

22. As a matter of course, Defendants routinely add a service charge of 23% to its food and beverage bills. These service charges have been in the form of automatic charges which customers are required to pay, and which reasonably appear to be gratuities for the service staff.

23. It is typically customary in the hospitality industry that establishments impose gratuity charges in the range of 18% to 22% of the food and beverage bills. Thus, when customers have paid these mandatory service charges, it is reasonable for the customers to believe those service charges are gratuities to be paid to the service staff. Indeed, because of the way these service charges are depicted to customers, and the custom in the food and beverage industry that gratuities range of 18% to 22% are paid for food and beverage service, customers pay these charges reasonably believing they were to be remitted to the service staff as gratuities.

24. However, Defendants do not remit the proceeds of these service charges to the non-managerial employees who serve the food and beverages. Instead, Defendants have a policy and practice of retaining those service charges for themselves. As a result, Plaintiff and Aggrieved Employees do not receive the proceeds of the service charges as gratuities, to which they are entitled under California law.

25. As a matter of policy, Defendants also require Plaintiff and Aggrieved Employees to remain on duty during their scheduled shifts, including during unpaid meal periods and rest breaks. Defendants do not compensate Aggrieved Employees for work performed while clocked out for meal periods. Defendants require Aggrieved Employees to manually clock out for these unpaid meal periods when in fact Aggrieved Employees do not receive a bona fide meal break relieved of all duties. In practice, Defendants shift the burden from themselves to individual workers to ensure that the workers receive a full, completely off-duty meal period. Plaintiff is informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved Employees throughout California.

26. In addition to working through unpaid meal periods, Aggrieved Employees also perform work while “off-the-clock” with Defendants’ knowledge, and are denied compensation for the time spent engaged in this off-the-clock work. Aggrieved Employees’ off-the-clock work includes cleaning, stocking supplies, securing the building, and performing various other tasks after clocking out for their shifts. Defendants discouraged Aggrieved Employees from recording work hours performed outside of their scheduled shifts. Even though Aggrieved Employees routinely work past the end of their shifts, Defendants set strict clock-out procedures requiring Aggrieved Employees to clock out within a few minutes of their scheduled end time, regardless of when they actually end their work. Aggrieved Employees are not compensated for this work performed outside of their recorded hours.

27. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees gratuities to which they are lawfully owed, meal and rest periods to which they are statutorily entitled,

as well as overtime premiums resulting from the additional off-the-clock work performed during meal breaks, as well as post-shift work performed for Defendants' benefit.

28. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved Employees premium pay for missed breaks and meal periods.

29. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system is used across all Defendants' facilities.

30. Defendants' common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Aggrieved Employees. Defendants have failed to record hours that Plaintiff and Aggrieved Employees worked during missed meal breaks, as well as hours worked off-the-clock.

31. Defendants' failure to record all gratuity payments and all hours worked also results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendants provides are not accurate because they do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff and Aggrieved Employees. The wage statements do not contain all of the service charges that should be paid as gratuity payments, and do not contain all of the off-the-clock work or time that should be compensable during interruptible meal breaks. Further, the wage statements are inaccurate because they do not include premium pay for missed breaks, overtime, and work that was performed while the timeclock was out of service.

32. Further, Defendants do not provide Aggrieved Employees, including Plaintiff, with full payment of all wages owed at the end of employment. As these workers are owed for off-the-clock work, unpaid overtime, and premium pay when their employment ends, and these amounts remain unpaid under Defendants' policies and practices, Defendants fail to pay all wages due upon termination. As a consequence, Defendants are subject to waiting time penalties.

33. On March 18, 2020, pursuant to Labor Code § 2699.3, Plaintiff served the California Labor and Workforce Development Agency with notice of his intention to file a PAGA action for

violations of Labor Code §§ 351 (gratuity violation); 1194 (failure to pay minimum wage); 50 (failure to pay overtime wages); 204 (failure to compensate for all hours worked); 510 (failure to pay overtime wages); 226.7 and 512 (failure to provide meal and rest periods); 226 and 226.3 (failure to provide timely and compliant itemized wage statements); 201-203, 225.5, and 256 (failure to timely pay all wages owed during employment and following separation from employment); and Business and Professions Code §§ 17200, *et seq.* (engaging in unfair business practices). Plaintiff served Defendant's registered agent with a courtesy copy of the notice via certified mail.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)

34. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

35. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

36. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

37. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial

Welfare Commission, (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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

38. Labor Code § 510(a) provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

39. Labor Code § 512(a) provides:

An employer shall 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 shall 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.

40. Labor Code § 558(a) provides:

(a) 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.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

41. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for herein.

42. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e), as prayed for herein.

43. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees compliant meal and rest periods in compliance with Labor Code § 512.

44. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days of work in any order of the IWC.

45. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, 227.3, and 256 of the California Labor Code.

46. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

47. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699(g)(i).

48. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for

1 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
2 award of attorneys' fees and costs as set forth below.

3 49. Wherefore, Plaintiff requests relief as hereinafter provided.

4 **SECOND CAUSE OF ACTION**
5 **Penalties Pursuant to Labor Code § 2699(f)**

6 50. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 51. Labor Code § 2699(f) provides:

9 For all provisions of this code except those for which a civil penalty is
10 specifically provided, there is established a civil penalty for a violation of
11 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
12 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

13 52. To the extent than any violation alleged herein does not carry penalties under Labor
14 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
15 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
16 by Labor Code § 2699(f).

17 53. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
18 notice of her intention to file this claim. Sixty-five calendar days have passed without notice from
19 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
20 compliance with § 2699.3(a).

21 54. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
22 Employees, and themselves as set forth in Labor Code § 2699(g)(i).

23 55. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
24 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
25 award of attorneys' fees and costs as set forth below.

26 56. Wherefore, Plaintiff requests relief as hereinafter provided.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
3 requests the following relief:

- 4 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
5 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
6 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
7 and/or any other applicable law;
8 3. For all costs of suit;
9 4. For interest on any penalties awarded, as provided by applicable law; and
10 5. For such other and further relief as this Court deems just and proper.

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16 Date: May 26, 2020

Respectfully submitted,



Carolyn H. Cottrell
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*Attorneys for Plaintiff, on behalf of the State of
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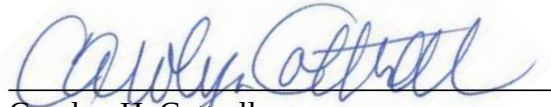
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

Date: May 26, 2020



Carolyn H. Cottrell
David C. Leimbach
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*Attorneys for Plaintiff, on behalf of the State of
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