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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 31 2020

BY 
BRIAN GUTIERREZ, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**

10 JESSICA GIOVANAZZI,

11 Plaintiff,

12 v.

13 ADOBE FLATS; USA MANAGEMENT,
14 LLC; USA POOLS OF CALIFORNIA; and
15 Does 1 through 100, Inclusive,

16 Defendants.

Case Number: **CIV DS 2017785**

Assigned for all purposes to:

COMPLAINT FOR:

(1) VIOLATION OF THE PRIVATE
ATTORNEY GENERAL ACT (LABOR
CODE SECTIONS 2698, ET SEQ.)

(2) CLASS ACTION FOR VIOLATION
OF LABOR CODE SECTION 925 -
INJUNCTIVE RELIEF AND
ATTORNEY'S FEES

(3) UNFAIR/UNLAWFUL BUSINESS
PRACTICES - BUSINESS &
PROFESSIONS CODE SECTIONS 17200,
et seq.

200912-0024 
200912-0026 

17 Plaintiff JESSICA GIOVANAZZI alleges as follows:

18 **GENERAL ALLEGATIONS**

19 1. Plaintiff is, and at all relevant times was, residing in San Bernardino County, State
20 of California.

21 2. At all times alleged herein, Plaintiff was employed by Defendants, ADOBE
22 FLATS; USA MANAGEMENT, LLC; USA POOLS OF CALIFORNIA; and Does 1 through 100,
23

26 **BY FAX**
27
28

1 Inclusive, and each of them, in San Bernardino County, California, and the Defendants' conduct
2 hereinafter alleged occurred in said County and State.

3 3. Plaintiff is informed and believes, and on that basis alleges, that Defendants,
4 ADOBE FLATS; USA MANAGEMENT, LLC; USA POOLS OF CALIFORNIA; and Does 1
5 through 100, Inclusive, and each of them, were corporations and/or other business entities form
6 unknown conducting business in the State of California, County of San Bernardino.

7 4. Plaintiff is informed and believes, and on that basis, alleges that Defendants, Does
8 51 through 100, inclusive, and each of them, were at all relevant times individuals residing and
9 working in the County of San Bernardino, State of California.

10 5. The true names and capacities of Defendants named as Does 1 through Doe 100,
11 inclusive, are presently unknown to Plaintiff. Plaintiff will amend this complaint, setting forth the
12 true names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is
13 informed and believes, and on that basis, alleges that each of the fictitious Defendants has
14 participated in the acts alleged in this complaint to have been done by the named Defendants.

15 6. Plaintiff is informed and believes, and on that basis alleges that, at all relevant
16 times, each of the Defendants, whether named or fictitious, was the agent or employee of each of
17 the other Defendants, and in doing the things alleged to have been done in the complaint, acted
18 within the scope of such agency or employment, or ratified the acts of the other. Moreover, at all
19 relevant times there existed such a unity of interest and ownership between the corporation and its
20 equitable owner that no separation actually existed and an inequitable result if the acts in question
21 are treated as those of the corporation alone.

22 **DEFENDANTS' LABOR CODE VIOLATIONS**

23 7. This action is brought on behalf of Plaintiff JESSICA GIOVANAZZI and all other
24 similarly situated and aggrieved former and/or current employees of USA Management
25 (Defendants, and each of them,) who, pursuant to Labor Code § 2699(c), suffered one or more of
26 the violations alleged herein. This includes, but is not limited to persons who, like Plaintiff,
27 are/were lifeguards, pool attendants, and pool managers for Defendants and each of them.

1 8. At all times, Defendants, and each of them, directly controlled and supervised the
2 nature of Plaintiff's work as well as the work of other similarly situated and aggrieved employees
3 (past and present life guards, pool attendants, and pool managers) for Defendants, and each of
4 them. Plaintiff and the other life guards, pool attendants, and pool managers were required to incur
5 various expenses in discharge of their work duties, including, but not limited to, uniforms (shirt,
6 pants, swim wear, bathing suits, shorts, pants, jackets and hats), many of which had to be purchased
7 directly through Defendants, and each of them. The life guards, pool attendants, and pool managers
8 including Plaintiff, also incurred expenses by Defendants, and each of them, requiring them to use
9 mobile data from their personal cellphones on a regular basis when performing duties and
10 responsibilities for Defendants, and each of them. Specifically, the Smart Phone Policy of
11 Defendants, and each of them, states that in a Company whose primary purpose is to provide safety
12 and to serve the customer, certain positions within the Company require a Smartphone to fulfill
13 job responsibilities. These job roles include lifeguards, pool attendants, and pool managers.

14 9. Furthermore, Plaintiff and other lifeguards, pool attendants, and pool managers do
15 not receive overtime pay despite, at times, working for more than 8 hours per day or more than 40
16 hours per week. They similarly do not receive meal or rest breaks.

17 10. Having shown that Defendants, and each of them, misclassified Plaintiff and other
18 similarly aggrieved lifeguards, pool attendants, and pool managers, as exempt receiving overtime,
19 they are liable for various violations of the Labor Code and other provisions of California law, as
20 set forth below.

21 (a). Failure to Pay Minimum Wages and Overtime (Labor Code §§ 510 1194.
22 IWC Wage Order 9): By misclassifying plaintiff and other aggrieved lifeguards,
23 pool attendants, and pool attendants as exempt from receiving overtime, defendants
24 and each of them have required them to work without receiving minimum wages
25 and overtime. An employee receiving less than the legal minimum wage or legal
overtime compensation "is entitled to recover in a civil action the unpaid balance
of the full amount of this minimum wage or overtime compensation, including
interest thereon, reasonable attorney's fees, and costs of suit." (Lab.C. § 1194.).

26 (b). Reimbursement of Employment Expenses (Labor Code § 2802):
27 Defendants' misclassification has also resulted in it having failed to reimburse
28 plaintiff and other aggrieved employees for all employment-related expenses

1 which, as set forth above, its employees were necessarily required to incur. For
2 instance, if an employer requires that an employee wear a uniform, the employer
3 must pay the cost of the uniform. (Labor Code § 2802, Industrial Welfare
4 Commission Orders, Section 9.) The term "uniform" includes wearing apparel and
5 accessories of distinctive design and color that defendants and each of them
6 required lifeguards, pool attendants, and pool managers to purchase in accordance
7 with defendants' "Uniform Agreement"). Under Labor Code § 2802, an employer
8 must indemnify its employees "for all necessary expenditures or losses incurred by
9 the employee in direct consequence of the discharge of his or her duties ..." (Lab.C.
10 § 2802(a).)

11 The elements of a §2802(a) cause of action are: "(1) the employee made expenditures or
12 incurred losses; (2) the expenditures or losses were incurred in direct consequence of the
13 employee's discharge of his or her duties, or obedience to the directions of the employer; and (3)
14 the expenditures or losses were necessary." (*Cassady v. Morgan, Lewis & Bockius LLP* (2006) 145
15 Cal.App.4th 220, 230; *USS-POSCO Industries v. Case* (2016) 244 Cal.App.4th 197, 205.)

16 The purpose of §2802 is "to prevent employers from passing their operating expenses on
17 to their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 C1.4th 554, 562; *Cochran*
18 *v. Schwan 's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.) Here, Defendants, and each
19 of them, required Plaintiff and other similarly aggrieved lifeguards, pool attendants, and pool
20 attendants to incur business-related expenses, and failed to reimburse the lifeguards for such
21 expenses.

22 (c) Unlawful Deductions from Wages (Labor Code §§ 221, 223, 224; Wage Order 9):
23 Defendants and each of them have made unlawful deductions from wages, such as, but
24 not limited to, uniform fees from plaintiff and other similarity aggrieved lifeguards, pool
25 attendants, and pool manager.

26 (d) Failure to Provide Meal Periods and to Authorize and Permit Rest Periods (Labor
27 Code §§ 226.7, 512; Wage Order 9): Under California law (which is much more generous
28 to employees than federal law), if an employee is a non-exempt worker (such as is the
case here), he/she is entitled to meal and rest breaks as follows: a 30-minute meal break
if the employee worked more than 5 hours in a workday, and 10 minutes breaks for every
4 hours he/she works. Here, plaintiff and other aggrieved lifeguards, pool attendants, and
pool managers are entitled to one extra hour of regular pay for each day on which a meal
break violation occurred, and another extra hour of regular pay for each day on which a
rest break violation occurred. Defendants and each of them failed to provide complaint
meal and rest periods to plaintiff and other aggrieved lifeguards, pool attendants, and pool
managers.

1 (e). Failure to Furnish Accurate Wage Statements, and to Otherwise Properly Maintain
2 Employment Records (Labor Code §§ 226, 226.3, 1174; Wage Order 9): Defendants and
3 each of them have also violated their obligation to provide accurate wage statements and
4 other employment records. Among other recordkeeping requirements under state law,
5 employers must keep records of the names and addresses of all employees, the ages of
6 any minors working, and daily hours worked, and wages paid to all employees. (Lab.C.
§§ 226, 1174.) Such records must be maintained for a minimum of two years—three years
for records showing wage deductions—and employers must allow inspection by the
employee and the DLSE. (Lab.C. §§ 226(a), 1174(d).)

7 The employer must provide an employee or former employee copies of his or her payroll
8 records within 21 days after a request or permit the employee to inspect those records. (Failure to
9 comply results in a \$750 fine, and the employee may sue to obtain the information and recover
10 costs and fees.) (Lab.C. § 226(c), (f) & (g).)

11 The following information must be furnished on the pay stub when wages are paid:
12 employer's name and address (and the name and address of the legal entity that secured the services
13 of the employer if the employer is a farm labor contractor); employee's name and the last four
14 digits of the employee's Social Security number; inclusive dates for which the employee is being
15 paid; gross wages earned; the applicable hourly rate and total hours worked for nonexempt
16 employees (for employees paid on a piece rate basis, the applicable piece rate and units earned);
17 all deductions; net wages earned; and if the employer is a temporary services employer, the rate of
18 pay and total hours worked for each temporary services assignment. (See Lab.C. § 226(a); *Morgan*
19 *v. United Retail Inc.* (2010) 186 Cal.App.4th 1136, 1146 [statement listing regular and overtime
hours, although not added together, showed "total hours worked"].)

20 An employee is deemed to suffer injury if the employer fails to provide a wage statement
21 or provides a wage statement that is inaccurate and the employee cannot promptly and easily
22 determine, without reference to other documents or information, any of the following: the
23 employer's name and address or, if the employer is a farm labor contractor, the name and address
24 of the legal entity that secured the employer's services during the pay period; the amount of gross
25 wages or net wages paid; the number of piece-rate units earned and the applicable rate if paid on
26 a piece-rate basis; the aggregate deduction amount or which deductions were made from gross
27 wages to determine the net wages paid during the pay period; all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee; or the employee's name and last four digits of his or her Social Security number or
3 employee identification number. (Lab.C. § 226(e)(2).)

4 Employees may obtain injunctive relief and if the employer's violation is "knowing and
5 intentional," also the greater of all actual damages or \$50 for the initial pay period in which a
6 violation occurs and \$100 per employee for each violation in a subsequent pay period, not
7 exceeding an "aggregate penalty" of \$4,000. Employees may also recover costs and reasonable
8 attorney fees. (Lab.C. § 226(e)(2), (g).)

9 An employer who violates Labor Code §226(a) is subject to civil penalties under Labor
10 Code section 226.3. Penalties may be assessed for "inadvertent" violations. "Inadvertence" does
11 not require any specific state of mind; rather, "(s)ince the word denotes the absence of deliberation
12 or intent, logically, no particular mental state is required." (*Heritage Residential Care, Inc. v.*
13 *Division of Labor Standards Enforcement*, 192 Cal.App.4th 84.)

14 Here, rest, recovery and meal break violations entitled the employees to an extra hour of
15 pay (wages) per type of violation for as long as the violations continue. These extra hours are not
16 reflected as earned on plaintiff's or any aggrieved lifeguard, pool attendant, or pool manager's pay
17 stubs. The rest break and meal break violations also result in pay stub violations, with aggregate
18 penalties up to \$4,000. Likewise, minimum and overtime wages earned by plaintiff and other
19 aggrieved lifeguards, pool attendants, and pool managers are not reflected on the wage statements,
20 in violation Code § 226.

21 (f). Waiting Time Penalties (Labor Code §§ 201-203, 208): Defendants' misclassification
22 of Plaintiff's and other aggrieved employees' employment status has likewise resulted in
23 violation of Labor Code section 203. This statute obligates an employer who willfully
24 fails to pay wages due an employee who is discharged or quits to pay the employee, in
25 addition to the unpaid wages, a penalty equal to the employee's daily wages for each day,
26 not exceeding 30 days, that the wages are unpaid. (*Caliber Bodyworks, Inc. v. Sup.Ct.*
(Herrera) (2005) 134 Cal.App.4th 365, 377.) Defendants and each of them have similarly
27 violated Labor Code section 208, which establishes defendants' statutory obligation to
28 properly deliver final pay.

(g) Failure to Provide Paid Sick Days: California's "Healthy Workplaces, Healthy
Families Act of 2014" (Lab.C. § 245 et seq.) requires most employers to provide eligible

1 employees with at least 24 paid hours or three paid sick days per year, whichever is
2 greater. (Lab.C. § 246(b)(3)-(4).) Defendants and each of them failed to provide this
3 benefit to plaintiff and other similarly aggrieved lifeguards, pool attendants, and pool
4 managers, as identified herein.

5 (h). Prohibition against requirement that employee residing and working in California
6 adjudicate claim outside of California or be deprived of substantive protection of
7 California law as condition of employment: California Labor Code Section 925 states
8 that (a) An employer shall not require an employee who primarily resides and works in
9 California, as a condition of employment, to agree to a provision that would do either of
10 the following:

11 (1) Require the employee to adjudicate outside of California a claim arising in California.

12 (2) Deprive the employee of the substantive protection of California law with respect to a
13 controversy arising in California.

14 (b) Any provision of a contract that violates subdivision (a) is voidable by the
15 employee, and if a provision is rendered void at the request of the employee, the matter
16 shall be adjudicated in California and California law shall govern the dispute.

17 (c) In addition to injunctive relief and any other remedies available, a court may
18 award an employee who is enforcing his or her rights under this section reasonable
19 attorney's fees.

20 (d) For purposes of this section, adjudication includes litigation and arbitration.

21 (e) This section shall not apply to a contract with an employee who is in fact
22 individually represented by legal counsel in negotiating the terms of an agreement to
23 designate either the venue or forum in which a controversy arising from the employment
24 contract may be adjudicated or the choice of law to be applied.

25 (f) This section shall apply to a contract entered into, modified, or extended on or
26 after January 1, 2017.

27 Here, Defendants, and each of them, required Plaintiff and other formally and currently
28 employed lifeguards, pool attendants, and pool managers residing in California to submit to the
exclusive personal jurisdiction and the sole and exclusive venue in the State or Superior Courts of
Gwinnett County, Georgia, for any action or proceeding as condition of employment, identified as
Defendants' Personnel Agreement. Furthermore, the Personnel Agreement that Plaintiff and other

1 aggrieved lifeguards, pool attendants, and pool managers that Defendants, and each of them,
2 mandated be signed as a condition of employment that states that Georgia substantive, procedural
3 and constitutional law shall govern.

4 If a Labor Code provision does not specify a penalty for its violation, the authorization to
5 bring a PAGA action for an alleged violation of that provision comes from subdivision (f) Cal.
6 Lab. Code § 2699(f). For persons who employ one or more employees, there is calculated as:

- 7 • \$100 for each aggrieved employee per pay period for the initial violation; and
- 8 • \$200 for each aggrieved employee per pay period for each subsequent violation.

9 Each and every provision requiring Plaintiff and other lifeguards, pool attendants, and pool
10 managers to exclusively litigate any action in the State or Superior Courts of Gwinnett County,
11 Georgia and/or exclusively use Georgia's law is voidable by each lifeguard, pool attendant, and
12 pool manager who resided in California and signed any of Defendants' agreements on or after
13 January 1, 2017. Therefore, any matter shall be adjudicated in California and California law shall
14 govern each and every dispute involving Plaintiff and other similarly situated lifeguards, pool
15 attendants, and pool manager. Accordingly, Defendants executed a voidable agreement to litigate
16 all claims in Courts of Gwinnett County, Georgia; as such, penalties under subdivision (f) Cal.
17 Lab. Code § 2699 should be awarded to Plaintiff and other aggrieved lifeguards, pool attendants,
18 and pool managers residing in California. Further penalties should be awarded under subdivision
19 (f) Cal. Lab. Code § 2699 to Plaintiff and other aggrieved lifeguards, pool attendants, and pool
20 managers residing in California and signed any agreement with defendants after January 1, 2017,
21 to apply Georgia's law in any action brought by the aggrieved employees against Defendants and
22 each of them.

23 11. In engaging in the aforesaid conduct, Defendants, and each of them, have violated,
24 and/or have caused to be violated, several Labor Code provisions, and are therefore liable for civil
25 penalties under California Labor Code § 2698 et seq.

26 12. Plaintiff has complied with and exhausted all administrative remedies by sending
27 certified letters to the PAGA (Private Attorney Generals Acts of 2004) Administrator and also her
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1 employers, Defendants, and each of them, as well as paying the requisite filing fee. Plaintiff's
2 claim number is 791226-20. A true and correct copy of Plaintiff's letter dated May 26, 2020, is
3 attached herewith as Exhibit A.

4 13. The LWDA did not provide notice of its intention to investigate Defendants'
5 alleged violations within the time provided in Labor Code section 2699.3(a)(2)(A).

6 **Plaintiff's action is timely.**

7 14. Rule 9 of the Covid-19 Emergency Court rules provides: "Emergency rule 9. Toll
8 the statutes of limitations for civil causes of action 12. Notwithstanding any other law, the statutes
9 of limitation for civil causes of action are tolled from April 6, 2020, until 90 days after the
10 Governor declares that the state of emergency related to the COVID-19 pandemic is lifted."

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT (LABOR CODE**
13 **SECTIONS 2698, ET SEQ.) AS AGAINST ALL DEFENDANTS**

14 15. Plaintiff incorporates each and every other allegation of this Complaint as though
15 fully set forth herein.

16 16. Plaintiff seeks recovery of penalties under the Private Attorney General Act of 2004
17 ("PAGA"), Labor Code sections 2698, et seq.

18 17. An "aggrieved employee" may maintain a civil action to recover civil penalties for
19 Labor Code violations "on behalf of himself or herself and other current or former employees
20 against whom one or more of the alleged violations was committed." (Labor Code section
21 2699(g)(1).)

22 18. Plaintiff is an aggrieved employee because she is employed by Defendants, and
23 each of them, and the alleged violations were committed by Defendants against Plaintiff as alleged
24 herein.

25 19. Plaintiff, as set forth above, has complied with the PAGA notice provision by
26 providing certified letters to defendants and to the LWDA containing the specific provisions of the
27 Labor Code alleged to have been violated, including the facts and theories to support such
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1 violations. Plaintiff has not received any response from Defendants within the requisite safe harbor
2 period that anything has been corrected or that Defendants dispute the allegations raised in
3 Plaintiff's notice (Exhibit A hereto).

4 20. Plaintiff requests civil penalties against Defendants, and each of them, for their
5 violations of the Labor Code, as provided under Labor Code sections 558 and 2699(f), plus
6 attorneys' fees and costs, in amounts to be proved at trial.

7 **SECOND CAUSE OF ACTION**

8 **(VIOLATION OF LABOR CODE SECTION 925 AGAINST ALL DEFENDANTS)**

9 21. Plaintiff incorporates each and every other allegation of this Complaint as though
10 fully set forth herein.

11 22. Plaintiff JESSICA GIOVANAZZI individually, and on behalf of all others
12 similarly situated, brings this action against defendants and each of them, and alleges, on
13 information and belief (except as to those allegations relating to plaintiff, which are asserted on
14 personal knowledge), as follows:

15 23. This action is brought as a class action under the provisions of California Code of
16 Civil Procedure section 382.

17 24. **PARTIES.** Plaintiff is a resident of the State of California, County of San
18 Bernardino and at all times worked for Defendants, and each of them, in the State of California,
19 County of San Bernardino.

20 25. At all material times, Defendants ADOBE FLATS; USA MANAGEMENT, LLC;
21 USA POOLS OF CALIFORNIA and Does 1 through 100, inclusive, and each of them, were
22 corporations and/or other business entities form unknown conducting business in the State of
23 California, County of San Bernardino.

24 26. The true names and capacities, whether individual, corporate, associate,
25 representative or otherwise, of the Defendants identified herein as Does 1 through 100, inclusive,
26 are unknown to Plaintiff, who therefore sues these Defendants by said fictitious names. Plaintiff
27 will amend this complaint to allege the true names and capacities of Does 1 through 100, when
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1 they have been ascertained. Does 1 through 100 are in some manner legally responsible for the
2 wrongs and injuries alleged herein.

3 27. Each Defendant acted as the agent or employee of the others and each acted within
4 the scope of that agency or employment.

5 JURISDICTION AND VENUE

6 28. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
7 section 410.10 and California Labor Code section 925. On behalf of herself and all others similarly
8 situated, Plaintiff seeks damages in excess of the jurisdictional minimum of this Court.

9 29. Venue is proper in this County because several witnesses (including Plaintiff's
10 supervisors) reside within San Bernardino County.

11 CLASS ACTION ALLEGATIONS

12 30. Plaintiff brings this action on her own behalf and on behalf of all similarly situated
13 drivers. Such a representative action is necessary to prevent and remedy the unlawful conduct
14 alleged herein.

15 31. This action is brought and may be properly maintained as a class action pursuant to
16 the provisions of Code of Civil Procedure section 382. Plaintiff brings this action on behalf of
17 herself and all members of the class, defined as follows: lifeguards, pool attendants, and pool
18 managers residing in California.

19 32. The members of the class are so numerous that joinder of all members is
20 impracticable. While the exact number of class members is unknown to Plaintiff at this time and
21 can only be ascertained through discovery, Plaintiff believes that there are at least 100 members
22 of the proposed class.

23 33. There is a well-defined community of interest among the members of the proposed
24 class. Plaintiff, like all other members of the class, was required by Defendants to execute an
25 agreement which violates the provisions of Labor Code section 925. The factual bases of
26 Defendants' misconduct are common to all members of the class and represent a common practice
27 of wrongful conduct resulting in damages to all members of the class.

1 34. There are numerous questions of law and fact common to Plaintiff and the members
2 of the class and those questions predominate over any questions that may affect individual
3 members of the class.

4 35. The common questions of fact include the following: Whether Defendants, in
5 violation of Labor Code section 925, required class members to execute arbitration agreements
6 which provide that they would submit to the jurisdiction of the State of Georgia even though
7 Plaintiffs reside and work in California.

8 36. The common questions of law include the following: Whether the subject
9 agreements may be voided; and whether Plaintiff and members of the class are entitled to
10 injunctive relief, other remedies, and attorneys' fees.

11 37. Plaintiff's claims are typical of the claims of the other members of the class.

12 38. Plaintiff will fairly and adequately represent and protect the interests of the class.
13 Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the class
14 and have the financial resources necessary to do so. Neither, Plaintiff nor her counsel has any
15 interest adverse to those of the class.

16 39. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy since individual joinder of all members of the class is
18 impracticable. Further, the expense and burden of individual litigation would make it difficult or
19 impossible for individual members of the class to redress the wrongs done to them. The cost to the
20 court system of such individual adjudication would be substantial. Individualized litigation would
21 also present the potential for inconsistent or contradictory judgments and would magnify the delay
22 and expense to all parties and the court system in multiple trials of identical factual issues. By
23 contrast, the conduct of this action as a class action presents fewer management difficulties,
24 conserves the resources of the parties and the court system and protects the rights of each class
25 member.

26 40. Plaintiff and the class members are entitled to an award of attorney's fees incurred
27 in connection with enforcing their rights under Labor Code section 925.

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(a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

(d) For purposes of this section, adjudication includes litigation and arbitration.

(f) This section shall apply to a contract entered into, modified, or extended on or after January 1, 2017.

42. At all times, Plaintiff and the class members were not individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

43. Labor Code section 925 prohibits employers from requiring employees, as a condition of employment, to agree to a contractual provision that either “require[s] the employee to adjudicate outside of California a claim arising in California” or “deprive[s] the employee the substantive protection of California law with respect to a controversy arising in California.”

44. Defendants, and each of them, violated the aforesaid provisions of Labor Code section 925 when they required Plaintiff and class members to execute agreements as set forth above.

45. As a direct and proximate result of Defendants' aforesaid violation, Plaintiff and the members of the class are being denied the protections of substantive California law and are entitled to void the subject agreements pursuant to Labor Code section 925.

46. The conduct of Defendants, and each of them, as described herein presents a continuing threat to Plaintiff, the class and members of the public in that Defendants persist and continue to engage in these practices, and will not cease doing so unless and until they are forced to do so by this Court. Defendants' conduct is causing, and will continue to cause, irreparable injury to Plaintiff and the class unless enjoined or restrained.

THIRD CAUSE OF ACTION

(For Unfair/Unlawful Business Practices – Business & Professions Code Sections 17200, et seq., Against All Defendants)

47. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 23 of this Complaint and thereby incorporates the same as though set forth in full herein. The Defendants' actions, as alleged herein, are fraudulent, unfair and unlawful, and constitute fraudulent, unfair and unlawful business practices within the meaning of Business & Professions Code section 17200, et seq.

Plaintiff is entitled to interest, injunctive relief, as well as an award of attorneys' fees and costs.

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1 **PRAYER FOR RELIEF**

2 **I.**
3 **AS TO THE PAGA CLAIM:**

4 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
5 judgment in her favor and against Defendants, and each of them, as follows:

- 6 (a) For civil penalties under PAGA in an amount to be determined at trial, but at least
7 the jurisdictional amount of this Court;
8 (b) For prejudgment interest at the legal rate;
9 (c) For attorneys' fees and costs; and
10 (d) For all such other and further relief as the Court may deem just, proper and
11 equitable.

12 **II.**
13 **AS TO THE CLASS ACTION:**

- 14 (a) For certification of this action as a class action as set forth hereinabove;
15 (b) For an award of compensatory damages in an amount according to proof at trial;
16 (c) For preliminary and permanent injunctive relief prohibiting Defendants from
17 engaging in the wrongful practices alleged in this Complaint;
18 (d) For an order declaring void those agreements which deprive said parties of the
19 substantive protection of California law with respect to any controversy arising in California as
20 described herein;
21 (e) For an award of costs and attorneys' fees as permitted by law;
22 (f) For such other and further relief as the Court deems just and proper.

23 DATED: August 27, 2020

24 Respectfully submitted,
25 SANFORD A. KASSEL
26 *A Professional Law Corporation*

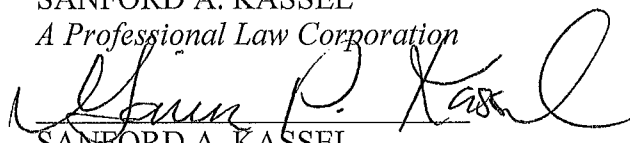
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EXHIBIT A

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Of Counsel*

May 26, 2020

SENT VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mike Price,
USA MANAGEMENT, LLC
28014 Liana Lane
Valencia, CA 91354

USA MANAGEMENT, LLC
237 Kearny St., Suite 367
San Francisco, CA 94108

USA MANAGEMENT, LLC
10800 Alpharetta Hwy, Suite 208-522
Roswell, GA 30076

USA POOLS OF CALIFORNIA
1976 S. La Cienega Blvd., Suite 277
Los Angeles, CA 90034

ADOBE FLATS
8303 D. Maumee Street
Twentynine Palms, CA 92277

PAGA ADMINISTRATOR
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *PAGA Notice pursuant to California Labor Code Section 2699*

Dear Sir or Madam:

Please be advised that this office represents Jessica Giovanazzi in connection with her employment claims against USA Management LLC and its related entities, including but not limited to: USA Management, LLC, USA Pools of California, Adobe Flats and its related entities, and DOES 1-50, entities not yet fully and completely ascertained. For ease of reference, these entities will be collectively referred to as "USA Management". The purpose of this letter is to advise you of USA Management's flagrant violations of the Labor Code and the Private Attorneys General Act of 2004. This letter is submitted on behalf of Ms. Giovanazzi and all other similarly situated and aggrieved former and/or current employees of USA Management who, pursuant to Labor Code § 2699(c), suffered one or more of the violations alleged herein. This includes, but is not limited to persons who, like Ms. Giovanazzi, were lifeguards, pool attendants, and pool managers were for USA Management.

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At all times, USA Management has directly controlled and supervised the nature of Ms. Giovanazzi's work, as well as the work of other similarly situated and aggrieved employees (past and present lifeguards, pool attendants, and pool managers) for USA Management. Ms. Giovanazzi and the other lifeguards, pool attendants, and pool managers were required to incur various expenses in discharge of their work duties, including, but not limited to, uniforms (shirt, pants, swim wear, bathing suits, shorts, pants, jackets and hats), many of which had to be purchased directly through USA Management. The lifeguards, pool attendants, and pool managers including Ms. Giovanazzi, also incurred expenses by USA Management requiring them to use mobile data from their personal cellphones on a regular basis when performing duties and responsibilities for USA Management. Specifically, USA Management's Smart Phone Policy states that In a Company whose primary purpose is to provide safety and to serve the customer, certain positions within the Company require a Smartphone to fulfill job responsibilities. These job roles include lifeguards, pool attendants, and pool managers.

Furthermore, Ms. Giovanazzi and other lifeguards, pool attendants, and pool managers do not receive overtime pay despite, at times, working for more than 8 hours per day or more than 40 hours per week. They similarly do not receive meal or rest breaks.

Having shown that USA Management misclassified Ms. Giovanazzi and other similarly aggrieved lifeguards, pool attendants, and pool managers, as exempt receiving overtime, it is liable for various violations of the Labor Code and other provisions of California law, as set forth below.

I.

Failure to Pay Minimum Wages and Overtime (Labor Code §§ 510 1194. IWC Wage Order 9)

By misclassifying Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool attendants as exempt from receiving overtime, USA Management has required them to work without receiving minimum wages and overtime. An employee receiving less than the legal minimum wage or legal overtime compensation "is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." (Lab.C. § 1194.).

II.

Reimbursement of Employment Expenses (Labor Code § 2802)

USA Management's misclassification has also resulted in it having failed to reimburse Ms. Giovanazzi and other aggrieved employees for all employment-related expenses which, as set forth above, its employees were necessarily required to incur. For instance, if an employer requires that an employee wear a uniform, the employer must pay the cost of the uniform. (Labor Code § 2802, Industrial Welfare Commission Orders, Section 9.) The term "uniform" includes wearing apparel and accessories of distinctive design and color that USA Management required lifeguards, pool attendants, and pool managers to purchase in accordance with USA Management's "Uniform Agreement"). Under Labor Code § 2802, an employer must indemnify its employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties ..." (Lab.C. § 2802(a).)

The elements of a § 2802(a) cause of action are: "(1) the employee made expenditures or incurred losses; (2) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (3) the expenditures or losses were necessary." (*Cassady v. Morgan, Lewis & Bocktus LLP* (2006) 145 Cal.App.4th 220, 230; *USS-POSCO Industries v. Case* (2016) 244 Cal.App.4th 197, 205.)

The purpose of § 2802 is "to prevent employers from passing their operating expenses on to their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cl.4th 554, 562; *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.) Here, USA Management required Ms. Giovanazzi and other similarly aggrieved lifeguards, pool attendants, and pool attendants to incur business-related expenses, and failed to reimburse the lifeguards for such expenses.

III.

Unlawful Deductions from Wages (Labor Code §§ 221, 223, 224; Wage Order 9)

USA Management has made unlawful deductions from wages, such as, but not limited to, uniform fees from Ms. Giovanazzi and other similarly aggrieved lifeguards, pool attendants, and pool manager.

IV.

**Failure to Provide Meal Periods and to Authorize and Permit Rest Periods
(Labor Code §§ 226.7, 512; Wage Order 9)**

Under California law (which is much more generous to employees than federal law), if an employee is a non-exempt worker (such as is the case here), he/she is entitled to meal and rest breaks as follows: a 30-minute meal break if the employee worked more than 5 hours in a workday, and 10 minutes breaks for every 4 hours he/she works. Here, Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool managers are entitled to one extra hour of regular pay for each day on which a meal break violation occurred, and another extra hour of regular pay for each day on which a rest break violation occurred. USA Management failed to provide complaint meal and rest periods to Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool managers.

V.

**Failure to Furnish Accurate Wage Statements, and to Otherwise Properly
Maintain Employment Records
(Labor Code §§ 226, 226.3, 1174; Wage Order 9)**

USA Management has also violated its obligation to provide accurate wage statements and other employment records.

Among other recordkeeping requirements under state law, employers must keep records of the names and addresses of all employees, the ages of any minors working, and daily hours worked, and wages paid to all employees. (Lab.C. §§ 226, 1174.) Such records must be maintained for a minimum of two years—three years for records showing wage deductions—and employers must allow inspection by the employee and the DLSE. (Lab.C. §§ 226(a), 1174(d).)

The employer must provide an employee or former employee copies of his or her payroll records within 21 days after a request, or permit the employee to inspect those records. (Failure to comply results in a \$750 fine, and the employee may sue to obtain the information and recover costs and fees.) (Lab.C. § 226(c), (f) & (g).)

The following information must be furnished on the pay stub when wages are paid: employer's name and address (and the name and address of the legal entity that secured the services of the employer if the employer is a farm labor contractor);

employee's name and the last four digits of the employee's Social Security number; inclusive dates for which the employee is being paid; gross wages earned; the applicable hourly rate and total hours worked for nonexempt employees (for employees paid on a piece rate basis, the applicable piece rate and units earned); all deductions; net wages earned; and if the employer is a temporary services employer, the rate of pay and total hours worked for each temporary services assignment. (See Lab.C. § 226(a); *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136, 1146 [statement listing regular and overtime hours, although not added together, showed "total hours worked"].)

An employee is deemed to suffer injury if the employer fails to provide a wage statement or provides a wage statement that is inaccurate and the employee cannot promptly and easily determine, without reference to other documents or information, any of the following: the employer's name and address or, if the employer is a farm labor contractor, the name and address of the legal entity that secured the employer's services during the pay period; the amount of gross wages or net wages paid; the number of piece-rate units earned and the applicable rate if paid on a piece-rate basis; the aggregate deduction amount or which deductions were made from gross wages to determine the net wages paid during the pay period; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; or the employee's name and last four digits of his or her Social Security number or employee identification number. (Lab.C. § 226(e)(2).)

Employees may obtain injunctive relief and if the employer's violation is "knowing and intentional," also the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an "aggregate penalty" of \$4,000. Employees may also recover costs and reasonable attorney fees. (Lab.C. § 226(e)(2), (g).)

An employer who violates Labor Code § 226(a) is subject to civil penalties under Labor Code section 226.3. Penalties may be assessed for "inadvertent" violations. "Inadvertence" does not require any specific state of mind; rather, "(s)ince the word denotes the absence of deliberation or intent, logically, no particular mental state is required." (*Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 84.)

Here, rest, recovery and meal break violations entitle the employees to an extra hour of pay (wages) per type of violation for as long as the violations continue. Because these extra hours are not reflected as earned on the Ms. Giovanazzi or any aggrieved lifeguard, pool attendant, or pool manager's pay stubs. The rest break and meal break violations also result in pay stub violations, with aggregate penalties up to \$4,000. Likewise, minimum and overtime wages earned by Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool managers are not reflected on the wage statements, in violation Code § 226.

VI.

Waiting Time Penalties (Labor Code §§ 201-203, 208)

USA Management's misclassification of Ms. Giovanazzi's and other aggrieved employees' employment status has likewise resulted in violation of Labor Code section 203. This statute obligates an employer who willfully fails to pay wages due an employee who is discharged or quits to pay the employee, in addition to the unpaid wages, a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. (*Caliber Bodyworks, Inc. v. Sup.Ct. (Herrera)* (2005) 134 Cal.App.4th 365, 377.) USA Management has similarly violated Labor Code section 208, which establishes USA Management's statutory obligation to properly deliver final pay.

VII.

Failure to Provide Paid Sick Days

California's "Healthy Workplaces, Healthy Families Act of 2014" (Lab.C. § 245 et seq.) requires most employers to provide eligible employees with at least 24 paid hours or three paid sick days per year, whichever is greater. (Lab.C. § 246(b)(3)-(4).) USA Management failed to provide this benefit to Ms. Giovanazzi and other similarly aggrieved lifeguards, pool attendants, and pool managers, as identified herein.

VIII.

Prohibition against requirement that employee residing and working in California adjudicate claim outside of California or be deprived of substantive protection of California law as condition of employment

California Labor Code Section 925 states that (a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing his or her rights under this section reasonable attorney's fees.

(d) For purposes of this section, adjudication includes litigation and arbitration.

(e) This section shall not apply to a contract with an employee who is in fact individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

(f) This section shall apply to a contract entered into, modified, or extended on or after January 1, 2017.

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Here, USA Management required Ms. Giovanazzi and other formally and currently employed lifeguards, pool attendants, and pool managers residing in California to submit to the exclusive personal jurisdiction and the sole and exclusive venue in the State or Superior Courts of Gwinnett County, Georgia, for any action or proceeding as condition of employment, identified as USA Management's Personnel Agreement. Furthermore, the Personnel Agreement that Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool managers that USA Management mandated be signed as a condition of employment states that Georgia substantive, procedural and constitutional law shall govern.

If a Labor Code provision does not specify a penalty for its violation, the authorization to bring a PAGA action for an alleged violation of that provision comes from subdivision (f) Cal. Lab. Code § 2699(f). For persons who employ one or more employees, there is calculated as:

- \$100 for each aggrieved employee per pay period for the initial violation; and;
- \$200 for each aggrieved employee per pay period for each subsequent violation.

Each and every provision requiring Ms. Giovanazzi and other lifeguards, pool attendants, and pool managers to exclusively litigate any action in the State or Superior Courts of Gwinnett County, Georgia and/or exclusively use Georgia's law is voidable by each lifeguard, pool attendant, and pool manager who resided in California and signed any USA Management agreement on or after January 1, 2017. Therefore, any matter shall be adjudicated in California and California law shall govern each and every dispute between Ms. Giovanazzi and other similarly situated lifeguards, pool attendants, and pool manager. Lastly, penalties under subdivision (f) Cal. Lab. Code § 2699 should be awarded to Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool managers residing in California USA Management to litigate all claims in Courts of Gwinnett County, Georgia. Further penalties should be awarded under subdivision (f) Cal. Lab. Code § 2699 to Ms. Giovanazzi and other aggrieved lifeguards, pool attendants, and pool managers residing in California and signed any agreement with USA Management after January 1, 2017 to apply Georgia's law in any action brought by the aggrieved employees against USA Management.

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CONCLUSION

In sum, USA Management has, in engaging in the aforesaid conduct, violated, and/or continues to violate several Labor Code provisions against Ms. Giovanazzi and other similarly situated lifeguards, pool attendants, and pool manager. USA Management is therefore liable for civil penalties under California Labor Code § 2698 et seq. We request that your agency investigate the claims alleged against USA Management. This letter will serve as notice of these allegations pursuant to the Private Attorney Generals Act of 2004 ("PAGA"). Cal. Lab. Code § 2699.3.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Gavin P. Kassel".

Gavin P. Kassel, Esq.
Attorney for Claimant
Jessica Giovanazzi

GPk:ljl