

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: David Cowan

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

OMAR GALLO as an individual and on  
behalf of all other aggrieved employees,

Plaintiff,

vs.

MULHOLLAND TENNIS CLUB, a  
California corporation; and DOES 1 through  
100,

Defendants.

Case No. 20STCV34581

**REPRESENTATIVE ACTION  
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE  
PRIVATE ATTORNEYS GENERAL  
ACT (LABOR CODE § 2698 *et seq.*)**

**UNLIMITED CIVIL CASE**

1 Plaintiff Omar Gallo ("Plaintiff"), on behalf of himself and all other aggrieved employees,  
2 hereby brings this Representative Action Complaint against Defendant Mulholland Tennis Club,  
3 a California corporation; and DOES 1 to 100, inclusive (collectively "Defendants"), and on  
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings  
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*  
8 *seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,  
10 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,  
11 or otherwise intentionally avail themselves to the California market so as to render the exercise  
12 of jurisdiction over them by the California courts consistent with the traditional notions of fair  
13 play and substantial justice.

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California  
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions  
17 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein  
18 Plaintiff was employed by Defendants within the County of Los Angeles.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
21 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.  
22 During the one year immediately preceding Plaintiff's giving of the required notice under the  
23 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,  
24 Plaintiff was employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one  
26 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the  
27 present, Defendants did (and do) business by operating a private member-owned club offering  
28 various accommodations and services, and employed Plaintiff and other similarly-situated hourly

1 non-exempt employees within the County of Los Angeles and, therefore, were (and are) doing  
2 business in the County of Los Angeles and the State of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
4 herein, Defendants were licensed to do business in California and the County of Los Angeles, and  
5 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 16).

6 7. Plaintiff does not know the true names or capacities, whether individual, partner,  
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said  
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
9 amend this Representative Action Complaint when such true names and capacities are discovered.  
10 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,  
11 whether individual, partners, or corporate, were responsible in some manner for the acts and  
12 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as  
13 defined in Paragraph 16) to be subject to the unlawful employment practices, wrongs, injuries,  
14 and damages complained of herein.

15 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
16 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as  
17 defined in Paragraph 16).

18 9. At all times herein mentioned, each of said Defendants participated in the doing  
19 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the  
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of  
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned  
22 were acting within the course and scope of said agency and employment. Defendants, and each  
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or  
24 omissions complained of herein.

25 10. At all times mentioned herein, Defendants, and each of them, were members of  
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,  
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the

Aggrieved Employees (as defined in Paragraph 16).

**REPRESENTATIVE ACTION ALLEGATIONS**

11. Defendants run a private member-owned club offering various accommodations and services, including tennis courts, banquet services, swimming pool, hot tub, saunas, and dining and bar services. Plaintiff was initially hired by Defendants in 1989 and worked as a non-exempt “server” and “bartender” until approximately November 19, 2019.

12. During Plaintiff’s and other aggrieved employees’ employment with Defendants, Plaintiff and other aggrieved employees were not paid all minimum and overtime wages due to Defendants’ timekeeping policies/practices. Specifically, Defendants utilized a timekeeping system which resulted in Plaintiff and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Defendants maintained a policy/practice of rounding Plaintiff and other aggrieved employees’ timeclock punches to the nearest quarter of an hour. Defendants’ timekeeping policies/practices were not even-handed and have resulted in Plaintiff and other aggrieved employees not being compensated for all hours worked. Further, on occasions when Plaintiff and other aggrieved employees worked over eight hours in a workday and/or forty hours in a workweek, and when Plaintiff and other aggrieved employees worked over twelve hours in a workday, Defendants’ timekeeping policies/practices deprived them of additional overtime and double-time wages earned. As a result of Defendants’ rounding policies/practices, Plaintiff and other aggrieved employees were not compensated for all minimum, overtime, and double-time wages.

13. Throughout Plaintiff’s and other aggrieved employees’ employment with Defendants, Defendants have failed to provide Plaintiff and other aggrieved employees with all statutorily mandated meal periods. Plaintiff and other aggrieved employees often worked a shift in excess of 6.0 hours and were not provided with any meal period at all due to Defendants’ policies/practices which fail to provide all legally-compliant meal periods. Furthermore, on the occasions when Plaintiff and other aggrieved employees were provided a first meal period, Plaintiff and other aggrieved employees were often provided with a late first meal period (i.e., commencing after the fifth hour of work) due to work demands imposed by Defendants.

Specifically, although Plaintiff and other aggrieved employees began working at 9:00 a.m. or 10:00 a.m. to staff various events such as weddings, receptions, and parties, Plaintiff and other aggrieved employees were not provided with a first meal period until well after the completion of five hours of work. Moreover, Defendants' meal period policies/practices do not provide for a second meal period for shifts in excess of 10.0 hours, nor were Plaintiff and other aggrieved employees provided with a second meal period for shifts over 10.0 hours. In the event that a legally compliant meal period was not in fact provided, Plaintiff and other aggrieved employees were not paid the meal period premium required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period to Plaintiff and other aggrieved employees.

14. Plaintiff and other aggrieved employees were not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices, which fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Due to Defendants' work demands imposed on Plaintiff and other aggrieved employees, Plaintiff and other aggrieved employees were not authorized and permitted all required rest periods. In the event that a legally compliant rest period was not in fact authorized and permitted, Plaintiff and other aggrieved employees were not paid the rest period premium required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period to Plaintiff and other aggrieved employees.

15. As a result of Defendants' failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendants failed to pay Plaintiff and other aggrieved employees all wages owed at the time of separation from employment with Defendants, and also failed to issue accurate, compliant, and itemized wage statements to Plaintiff and other aggrieved employees. Additionally, Defendants issued facially non-compliant wage statements to Plaintiff and other aggrieved employees, which failed to state all applicable rates of pay and number of

1 hours worked at each rate of pay in violation of Labor Code § 226(a)(9). Specifically, the wage  
2 statements issued by Defendants fail to list the hourly rates and corresponding hours for “Pay  
3 Differential Over Time” and “Pay Differential Regular Time.” The wage statements issued by  
4 Defendants are also facially deficient in that Defendants incorrectly list the “Overtime” rate of  
5 pay on Plaintiff’s and other aggrieved employees’ wage statements. For example, during the pay  
6 period of 10/07/2019 – 10/20/2019, Defendants list Plaintiff’s “overtime” rate of pay as \$21.370,  
7 notwithstanding the fact that Plaintiff’s correct overtime rate for this pay period was \$21.375.

8 16. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved  
9 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code  
10 violations discussed herein.

11 **FIRST CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **(AGAINST ALL DEFENDANTS)**

14 17. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though  
15 fully set forth herein.

16 18. Defendants have committed several Labor Code violations against Plaintiff and  
17 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor  
18 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this  
19 representative action against Defendants to recover the civil penalties due to Plaintiff, other  
20 aggrieved employees, and the State of California according to proof, including, but not limited  
21 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for  
22 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for  
23 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for  
24 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per  
25 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent  
26 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each  
27 initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per  
28 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each

subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay minimum wages for all hours worked to Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

19. On or about July 2, 2020, Plaintiff notified Defendants Mulholland Tennis Club via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 18 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with

1 respect to these violations.

2 20. Plaintiff was compelled to retain the services of counsel to file this court action to  
3 protect his interests and the interests of other aggrieved employees, and to assess and collect the  
4 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which  
5 he is entitled to receive under California Labor Code § 2699.

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf  
8 this suit is brought against Defendants, jointly and severally, as follows:

9 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved  
10 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and  
11 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure  
12 to pay each employee and \$200 for each subsequent violation or willful or intentional violation  
13 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount  
14 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation  
15 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation  
16 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per  
17 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation  
18 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial  
19 violation and \$200 for each subsequent violation per employee per pay period for those violations  
20 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code  
21 violations identified in Paragraph 18 (a)-(h);

22 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §  
23 2699(g) and Code of Civil Procedure § 1021.5; and

24 3. For such other and further relief the Court may deem just and proper.

25 Dated: September 10, 2020

Respectfully submitted,  
HAINES LAW GROUP, APC

26  
27 By: 

Paul K. Haines  
Attorneys for Plaintiff