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ENDORSED
FILED
San Francisco County Superior Court

NOV 20 2020
CLERK OF THE COURT

By: BOWMAN LIU
Deputy Clerk

Attorneys for Plaintiff: Allyson Klipa

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ALLYSON KLIPA, individually,
and on behalf of all others similarly
situated;

Plaintiffs,

v.

THE BAY CLUBS COMPANY
LLC; and
DOES 1 through 50, inclusive;

Defendants.

CASE NO.:

CGC -20-587892

COMPLAINT FOR DAMAGES FOR:

Remedies Under Private
Attorneys General Act (PAGA
California Labor Code §§ 2698,
2699, et seq.

BY FAX

Plaintiff Allyson Klipa (hereinafter "Plaintiff"), acting for the interests of other aggrieved current and former employees of Defendant, the Bay Clubs Company LLC, (hereinafter "Defendant") alleges the following:

NATURE OF THE ACTION

1. Pursuant to Labor Code Private Attorneys General Act ("PAGA"), §§ 2698, 2699 of the California Labor Code, Plaintiff brings this action against Defendant for wage and hour abuses in violation of the California Labor Code and the Industrial Welfare Commission Wage Orders (the "IWC Wage Orders"), all of which contribute to Defendant's deliberate unfair competition.
2. Plaintiff brings this action seeking reimbursement, penalties, restitution, injunctive and other

1 equitable relief, reasonable attorneys' fees, and costs.

2 3. The monetary damages and restitution sought by Plaintiff will be established according to
3 proof at trial. Upon information and belief, the claims of individual Represented Employees,
4 including Plaintiff, are under the \$75,000 jurisdictional threshold for federal court. For example, a
5 Represented Employee who was or has been employed for a relatively brief period could never
6 reasonably be expected to receive a recovery of \$75,000 or more. Further, there is no federal
7 question at issue, as all the issues related to payment wages alleged herein are based solely on
8 California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and
9 Business and Professions Code. Finally, the claims are brought only on behalf of California workers.

10
11 **JURISDICTION AND VENUE**

12 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is
13 proper in the Superior Court of California because Plaintiff alleges claims arising under California
14 law.

15 5. This Court has jurisdiction over defendants because each is an association, corporation,
16 business entity, or individual that in fact conducts substantial business in the State of California.

17 6. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior
18 Court of California for the County of San Francisco, because this is where Defendant is located.

19
20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 7. As to penalty claims under the Labor Code Private Attorneys General Act, on or about
22 September 15, 2020, Plaintiff exhausted her administrative remedies by filing a complaint online
23 with the LWDA and sending said complaint to Defendant via certified U.S. mail.

24 8. The 65-day statutory period for Plaintiff expired and the LWDA did not serve Plaintiff with
25 a notice of intent to assume jurisdiction over the applicable penalty claims.

26 9. Therefore, Plaintiff has exhausted Plaintiff's administrative remedies as to the penalty claims
27 sought in this Complaint.
28

PLAINTIFF

10. Plaintiff, Allyson Klipa, is a natural person and was, during the relevant time period identified herein, employed by the Bay Clubs Company LLC, within the State of California, as a “Group Fitness Instructor.”

11. In said position, Plaintiff was repeatedly paid a substandard wage insofar as she was denied full pay for all hours worked and did not receive reimbursement for expenses made on behalf of defendant. Plaintiff is informed and believes, and based thereon, alleges that this conduct of Defendant is and was commonplace at every location owned and operated thereby.

12. As used throughout this Complaint, the term “Represented Employees” refers to the named plaintiff herein as well as each and every other current or former aggrieved employee of Defendant, as further described and defined herein.

DEFENDANT

13. At all times herein relevant, Defendant, the Bay Clubs Company LLC, was, and is, a Delaware limited liability company with a principal place of business within the State of California and with health and fitness facilities located both within this judicial district and elsewhere across the United States.

14. Plaintiff is informed and believes and, on that basis, alleges that Defendant has, and does, directly and/or indirectly, employed and/or exercised control over the wages, hours and working conditions of the Plaintiff and members of the class.

15. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some/each of the remaining defendants. The Plaintiff is informed and believes and, on that basis alleges that, at all times herein mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed and/or exercised control over the wages, hours and/or working conditions of Plaintiff and Represented Employees at various California locations, as identified in the preceding paragraph.

1 16. Plaintiff is unaware of the true names and capacities of those defendants sued herein as
2 Does 1 through 100, inclusive and therefore, sue these defendants by such fictitious names. The
3 Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named
4 defendants is responsible in some manner for, gave consent to, ratified and/or authorized the
5 conduct herein alleged and that the Plaintiff's and Represented Employees' damages, as herein
6 alleged, were proximately caused thereby.

7 17. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times
8 herein mentioned, each of the defendants was the agent and/or employee of each of the remaining
9 defendants and, in doing the acts herein alleged, was acting within the course and scope of such
10 agency and/or employment.

11
12 **GENERAL ALLEGATIONS**

13 18. Defendant maintains and operates health and fitness facilities and makes the strength-
14 building and cardiovascular fitness equipment and services (e.g., group fitness classes) at these
15 facilities available to the public on a membership basis. Within the PAGA Period, Defendant has
16 operated numerous facilities throughout California. In so doing, Defendant has employed
17 hundreds, if not thousands, of individuals in recent years alone as Group Fitness Instructors, non-
18 overtime-exempt employees who are entitled to, *inter alia*, be paid for all hours worked, at their
19 regular rate of pay, to be reimbursed for necessary expenditures incurred as a direct consequence
20 of the discharge of their duties, and to be paid said wages and reimbursed for said expenditures
21 incurred in a timely manner.

22 19. Defendant's Group Fitness Instructors are responsible for facilitating the Bay Clubs'
23 members' health and fitness goals through the instructions of group classes, including but not
24 limited to, "Power Sculpt," "Cycle," "Open Air Ignite," "HIIT," "Zumba," "Boot Camp," "Group
25 Power," "Pilates," "BODYCOMBAT," "Vinyasa Flow," "BODYPUMP," and "Rhythm Ride."
26
27
28

20. Certain group classes offered by Defendant, including but not limited to “BODYPUMP” and “Group Power,” are branded, trademarked fitness methods that are highly regulated and controlled by the companies that developed them.

21. The Group Fitness Instructors have to be registered with the company at a specific facility and are not allowed to teach the classes at a facility where they are not registered.

22. The companies require that the Group Fitness Instructors be trained and certified, and also require that the employees only teach the latest released choreographed routines, set to the music chosen by the company. A new set of choreography and music is usually released each quarter and is referred to as a “Release” or an “Autoship” because they are automatically sent to the Group Fitness Instructors.

23. Group Fitness Instructors who teach these classes must purchase each new Release and learn the music and choreography before teaching the class. It takes a significant time for the Group Fitness Instructors to learn the new Releases, which often require specific exercises to be done to specific beats of the music.

24. Group Fitness Instructors are not allowed to use previous music and choreography once there is a new “Release.”

Failure to Pay Wages in Violation of California Wage Order(s) and Labor Code §§ 200, et seq., 510, 1194, 1194.2, 1197.1 and 1198

25. Group Fitness Instructors often teach several classes a day, and are responsible for performing additional tasks such as preparing group workout rooms for instructions, locking and unlocking cabinets and equipment pieces, setting up, breaking down, cleaning and performing basic maintenance before and after classes, counseling members, completing paperwork, preparing music and/or new Releases, meeting with other Group Fitness Instructors, finding another instructor to fill-in for them in the event of sickness, traveling to and from group workout rooms and other areas in the facility, learning the latest choreographed workout routine every three months and a host of other preparatory activities required for the performance of their positions with and for the benefit of Defendant.

26. Defendant establishes and publishes, for its members' benefit, class descriptions as well as class durations for each group class it offers. As such, Defendant advertises the class length as being the actual duration of instruction.

27. Notwithstanding the foregoing, no matter how many hours are spent by Group Fitness Instructors performing tasks for the benefit of Defendant, such as those identified above, Group Fitness Instructors are paid only for the length of time associated with and advertised for the particular class they are scheduled to teach.

28. Defendant denies Group Fitness Instructors wages for all hours worked despite the Bay Clubs' resultant knowledge that it is fraudulently depriving its employees of wages due on an ongoing basis.

29. Moreover, the Plaintiff is informed and believes and, based thereon, alleges Defendant knew and/or should have known that its Group Fitness Instructors are and, at all times during the PAGA Period, were performing work in preparation for the particular formats, classes or sessions they are and/or were scheduled to teach, in addition to work performed off- premises (e.g., at home, at continuing education/training programs, maintaining "Autoship(s)" whereby, four times a year, instructors must pay for and learn the latest workout releases) for which Represented Employees were not being compensated.

30. Defendant's failure to compensate Plaintiff and the Represented Employees for some and/or all of the wages earned, including overtime wages, violated the applicable California Wage Order, Title 8 of the California Code of Regulations and California Labor Code §§ 510, 1194, 1194.2, 1197.1 and 1198.

Failure to Reimburse Expenses and/or Prohibited Cash Bond Under California Labor Code §§ 406 and 2802

31. Many Group Fitness Instructors are required to receive the quarterly "Autoships."

32. Plaintiff and the Represented employees were required to purchase their own "Autoships" whenever they became available in order to remain in "Active" status and be eligible to teach certain group classes (including substitute instructors).

1 33. Furthermore, these Group Fitness Instructors can only teach group classes at the facility
2 where they have been registered with the controlling entity. In other words, not only are they
3 required to incur “Autoship” fees every three months to teach group classes, but these instructors
4 can only teach for Defendant.

5 34. Defendant has enjoyed an advantage over its competition and disadvantaged its workers
6 by requiring its employees to purchase the Releases so that it can offer particular fitness classes,
7 but electing not to reimburse these business-related expenses to its Group Fitness Instructors.

8 35. Additionally, Defendant required the Plaintiff and the Represented Employees to incur
9 expenses related to the business operations of defendant, which included without limitation, costs
10 related to travel, continuing education and/or fitness certification, licenses, maintaining
11 “Autoship” to be eligible to instruct group classes and/or materials, clothing, and equipment used
12 in the instruction of group fitness classes.

13 36. These expenditures were incurred in direct consequence of the discharge of the duties of
14 Plaintiff and the Represented Employees, or of their obedience to the directions of the employer
15 and have not yet been reimbursed by defendant.

16 37. At all relevant times, the Bay Clubs was aware of and was under a duty to comply with
17 various provisions of the California Labor Code, including, but not necessarily limited to §§ 406
18 and 2802(a).

19 38. California Labor Code § 406 provides:

20
21 Any property put up by an employee, or applicant as a part of the contract of
22 employment, directly or indirectly, shall be deemed to be put up as a bond and is
23 subject to the provisions of this article whether the property is put up on a note or
24 as a loan or an investment and regardless of the wording of the agreement under
25 which it is put up.

26 39. California Labor Code § 2802(a) provides:

27 An employer shall indemnify his or her employees for all necessary expenditures
28 or losses incurred by the employee in direct consequence of the discharge of his or
her duties, even though unlawful, unless the employee, at that the time of obeying
the directions, believed them to be unlawful.

40. The purpose of § 2802 is to prevent employers from passing their operating expenses on to their employees. By requiring the Plaintiff and the Represented Employees to incur uncompensated expenses in direct consequence of the discharge of their duties, Plaintiff and the Represented Employees were forced and/or brought to contribute to the capital and expenses of defendant's business.

Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code §§ 226 and 1174

41. California Labor Code § 226(a) provides:

Each 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 itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

42. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code Regs. § 11010, *et seq.*).

43. California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a central location in the state . . . payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years.

44. Defendant never kept track of all hours that its Group Fitness instructors worked because it only tracked and paid them for the time that they were scheduled to teach their respective

1 classes. As a result, Plaintiff and the Represented Employees received inaccurate wage
2 statements which only provided for the time they were scheduled to teach and actually did teach.

3
4 **Failure to Pay Wages on Termination in Violation of California Labor Code §§ 201-203**

5 45. California Labor Code § 203 provides that:

6 If an employer willfully fails to pay, without abatement or reduction, in
7 accordance with Section 201, 201.5, 202, and 205.5, any wages of an employee
8 who is discharged or who quits, the wages of the employee shall continue as a
9 penalty from the due date thereof at the same rate until paid or until an action
therefor is commenced; but the wages shall not continue for more than 30 days.

10 46. Plaintiff and the Represented Employees whose employment was voluntarily or
11 involuntarily severed, yet were not paid all wages due immediately upon the involuntary
12 termination or within seventy-two hours of the voluntary termination of their respective
13 employment positions with defendant.

14 47. More than thirty days has elapsed since Plaintiff and the Represented Employees were
15 terminated and/or resigned from defendant's employ.

16 **FIRST CAUSE OF ACTION**
17 **THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004**
18 **(California Labor Code §§ 2698, 2699, *et seq.*)**

19 48. Plaintiff incorporates in this cause of action each and every allegation of the preceding
20 paragraphs, with the same force and effect as though fully set forth herein.

21 49. California Labor Code § 2699 provides in relevant part that:

22 Notwithstanding any other provision of law, any provision of this code that
23 provides for a civil penalty to be assessed and collected by the Labor and
24 Workforce Development Agency or any of its departments, divisions,
25 commissions, boards, agencies, or employees, for a violation of this code, may, as
26 an alternative, be recovered through a civil action brought by an aggrieved
27 employee on behalf of herself and other current or former employees pursuant to
28 the procedures specified in Section 2699.3

50. Plaintiff is an “aggrieved employee” because she was employed by Defendant, and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former Represented Employees.

51. Because of the acts alleged above, Plaintiff specifically seeks damages and penalties under Labor Code 2699, for the following:

- (a) Violations of Labor Code §§ 510, 1194, 1194.2, 1197.1 and 1198 for failing to pay minimum, regular and overtime wages as alleged in this Complaint;
- (b) Violations of Labor Code §§ 406 and 2802 for failing to reimburse expenses and/or prohibited cash bond as alleged in this Complaint;
- (c) Violations of Labor Code §§ 226 and 1174 for failing to provide accurate itemized wage statements as alleged in this Complaint; and
- (d) Violations of Labor Code §§ 201-203 for willfully failing to pay wages due on termination.

52. Furthermore, pursuant to Labor Code § 2698, *et seq.*, Plaintiff seeks to recover attorneys’ fees, costs, damages, civil penalties, and wages on behalf of herself and the Represented Employees as alleged herein, in an amount to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That the Court find that Defendants’ violations as described above are found to have been willful;
2. That the Court award to Plaintiff and/or the Represented Employees damages and penalties subject to proof at trial;
3. That Defendants, and each of them, be ordered and enjoined to pay restitution to Plaintiff and/or Represented Employees;
4. For all remedies available under the applicable Industrial Welfare Commission Order and Labor Code §§ 406, 510, 558, 1194, 1194.2, 1197.1, 1198, 2698, *et seq.*, and 2802, and including an award of unpaid wages, attorneys’ fees, costs, interest, liquidated

1 damages, damages, penalties and waiting time penalties according to proof to the extent
2 permitted by law via PAGA;

3 5. For Labor Code § 226(e) damages/penalties for Plaintiff and each Represented
4 Employee via PAGA;

5 6. For Labor Code § 203 penalties in an amount to be proven at trial via PAGA;

6 7. That Plaintiff and/or the Represented Employees be awarded reasonable attorneys' fees
7 where available by law, including but not limited to pursuant to Labor Code §§ 2698,
8 et seq., Code of Civil Procedure § 1021.5, and/or other applicable laws; and

9 8. Such other and further relief as the Court may deem proper and just.

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11 DATED: November 19, 2020

LAW OFFICES OF DEVON K. ROEPCKE, PC

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13
14 By: Devon K. Roepcke
15 DEVON K. ROEPCKE, ESQ.
16 Attorneys for Plaintiff
17 Allyson Klipa
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