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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO—CENTRAL**

14 LIZBETH GARCIA, on behalf of herself and
15 all aggrieved employees,

16 Plaintiff,

17 v.

18 THE BAY CLUBS COMP[ANY, LLC; and
DOES 1 through 50, inclusive,

19 Defendants.
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CASE NO.: 37-2013-00056664-CU-OE-CTL

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF EX PARTE APPLICATION
FOR COURT APPROVAL OF THE
PARTIES' PAGA SETTLEMENT**

Date: March 8, 2022
Time: 8:30 a.m.
Dept.: C-71
Judge: Hon. Gregory W. Pollack
Complaint Filed: June 13, 2018
Trial Date: January 14, 2022

[filed concurrently with Plaintiff Lizbeth Garcia's Notice of Unopposed Ex Parte Application; Plaintiff's Unopposed Ex Parte Application Declaration of Jeffrey L. Hogue; Declaration of Devon K. Roepcke; Declaration of Ernesto Sanchez; Declaration of William M. Turner; Declaration of Lizbeth Garcia; Declaration of Jeyson Pineda; Declaration of Patricia Calderon; Declaration of Caroline Salazar; Notice of Lodgment; Proposed Order; Proposed Judgement]

1 Plaintiff Lizbeth Garcia, on behalf of herself and other aggrieved employees, in support of her
2 Ex Parte Application for Approval of PAGA Settlement, under California Evidence Code sections
3 451, 452, and 453 and California Rules of Court, Rule 3.1306, hereby request that the Court take
4 judicial notice of:

- 5 • **RJN Exhibit 1** - a true and correct copy of the Complaint filed in *Salazar v. The Bay Clubs*
6 *Company, LLC* (Case No. YC073022) on July 19, 2018 in the Superior Court of Los
7 Angeles County;
- 8 • **RJN Exhibit 2** - a true and correct copy of the Complaint filed in *Pineda v. The Bay Clubs*
9 *Company, LLC* (Case No. 18CIV05996) on November 6, 2018 in the Superior Court of San
10 Mateo County;
- 11 • **RJN Exhibit 3** - a true and correct copy of the Complaint filed in *Klipa v. The Bay Clubs*
12 *Company, LLC* (Case No. CGC-20-587892) on November 20, 2020 in the Superior Court of
13 San Francisco County;
- 14 • **RJN Exhibit 4** - a true and correct copy of the Complaint filed in *Nichols v. The Bay Clubs*
15 *Company, LLC* (Case No. CGC-18-568966) on August 16, 2018 in the Superior Court of
16 San Francisco County;

17 Pursuant to Evidence Code section 452(d), a court may take judicial notice of “[r]ecords of
18 (1) any court of this state or (2) any court of record of the United States or of any state of the
19 United States.” A court may take notice of the existence of the pleading in a case. (*Bennett v.*
20 *Regents of University of California* (2005) 133 Cal. App. 4th 347.) The above-described exhibits
21 include pleadings filed in California Superior Courts, which are not reasonably subject to dispute,
22 and relate to matters raised throughout this case. Accordingly, Plaintiff requests that this Request
23 for Judicial Notice be granted.

24 Dated: March 3, 2022

HOGUE & BELONG

25 By s/ Jeffrey L. Hogue
26 JEFFREY L. HOGUE
27 TYLER J. BELONG
28 DEVON K. ROEPCKE
Attorneys for the Plaintiffs

Exhibit “1”

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

JUL 19 2018

Sherri R. Carter, Executive Officer/Clerk
By T. Rhodes Deputy

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Attorneys for Plaintiff Carolina Salazar

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

CAROLINA SALAZAR,

Plaintiff,

v.

THE BAY CLUBS COMPANY, LLC, a
Delaware company; BAY CLUB LOS
ANGELES, INC., a California corporation;
and DOES 1 through 20, inclusive,

Defendants.

Case No. **Y C073022**

COMPLAINT FOR:

1. Violation of the Labor Code Private
Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

BY FAX

Plaintiff Carolina Salazar alleges as follows:

PARTIES

1. Plaintiff Carolina Salazar is an individual, residing in Los Angeles County, California.
2. Defendant The Bay Clubs Company, LLC is a limited liability company organized under the laws of Delaware and doing business in California.
3. Defendant Bay Club Los Angeles, Inc. a corporation organized under the laws of California, doing business in California, and maintaining offices in several counties in California.
4. The true names and capacities of defendants Does 1 through 20, whether individual, corporate, associate or otherwise, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of

1 the defendants fictitiously named herein as Doe is legally responsible in some manner for the events
2 and happenings hereinafter alleged and/or is legally affiliated with Defendants.

3 5. Plaintiff is informed and believes that all the defendants were and remain the
4 agent of one another, and each of the breaches and other misconduct alleged herein occurred within the
5 course and scope of such agency relationships, and with the permission and consent of the other
6 defendants.

7 JURISDICTION AND VENUE

8 6. This court has subject matter jurisdiction over this action pursuant to California
9 Code of Civil Procedure section 410.10 and because of Defendants' violations of California Labor
10 Code sections 201, 202, 203, 221, 226, 1194 and 2802. Courts in California have personal jurisdiction
11 over the parties because Plaintiff submits to the jurisdiction of the court and Defendants systematically
12 and continually do business in Los Angeles County, California.

13 7. Venue is proper in the Los Angeles County Superior Court pursuant to California
14 Code of Civil Procedure sections 395 and 395.5 because Defendants do business in Los Angeles County
15 and acts giving rise to this complaint took place in Los Angeles County.

16 GENERAL ALLEGATIONS

17 8. Plaintiff was employed by The Bay Clubs Company, LLC and Bay Club Los
18 Angeles, Inc. (collectively "Bay Club") and its predecessors for approximately three and a half years.
19 She started as a front-desk receptionist in March of 2014. She worked part-time, and due to the business
20 needs of having to attend to clients and the company's understaffing, she was not provided rest breaks.

21 9. Plaintiff was interested in fitness but when she asked management about being
22 a trainer, they told her she "did not fit the bill," and suggested she consider a sales position.

23 10. Plaintiff eventually became a Membership Director at the South Bay club until
24 she was terminated in July 2017.

25 11. As a Membership Director, Plaintiff was not provided appropriate meal and rest
26 breaks. Even if she was entitled to take breaks, she was required to be "on call," and often had to
27 continue working during an allotted meal or rest break. On occasion, management would even disrupt
28 Ms. Salazar's lunch workouts to have her meet with a client. In addition, Ms. Salazar often worked

1 “off the clock” before or after work or during such breaks, with her supervisor’s knowledge and usually
2 on request.

3 12. Plaintiff, and similarly aggrieved employees, were also required to use their
4 personal cell phones for work. None of those employees was reimbursed for the additional cost to their
5 cell phone bills.

6 13. Membership Directors were compensated pursuant to a detailed compensation
7 plan with various sales incentive options. As a result, many of them, especially those in the South Bay,
8 earned a significant amount of money.

9 14. In January 2017, management told employees like Ms. Salazar that they were
10 changing the commission structure for the Membership Directors. Although they were told that the
11 details of the change would be provided, employees like Ms. Salazar never received an explanation of
12 the changes that were implemented, let alone a revised commission agreement. Instead, they noticed
13 their paychecks getting smaller, without any indication as to why. Ms. Salazar repeatedly asked
14 management about what changes the company had made to her compensation, and the company did
15 not notify her, or other employees, of any changes despite its legal obligation to do so.

16 15. As a result of the stress from her position, Ms. Salazar started to suffer from
17 anxiety and took a three-week leave of absence. Ms. Salazar learned that while she was gone,
18 management ridiculed Ms. Salazar for taking time off to attend to her health needs. Ms. Salazar
19 returned to work from her leave on June 22, 2017. She was terminated on July 6, 2017. Ms. Salazar
20 believed she was due earned commissions after termination, but when she reached out the Human
21 Resources, she was provided an insufficient explanation.

22 **FIRST COUNT**

23 **Violation of the Labor Code Private Attorneys General Act of 2004**

24 **(Cal. Labor Code (§§2698 *et seq.*))**

25 **(By Plaintiff Individually and As Representative Against All Defendants)**

26 16. Plaintiff repeats and realleges each and every fact, matter and allegation set forth
27 in paragraphs 1 through 15 above and incorporates them at this point by this reference as though set
28 forth in full.

1 17. Section 2699(a) of PAGA provides:

2 Notwithstanding any other provision of law, any provision of this
3 code that provides for a civil penalty to be assessed and collected by the
4 Labor and Workforce Development Agency or any of its departments,
5 divisions, commissions, boards, agencies, or employees, for a violation
6 of this code, may, as an alternative, be recovered through a civil action
7 brought by an aggrieved employee on behalf of himself or herself and
8 other current or former employees pursuant to the procedures specified
9 in Section 2699.3.

10 18. Labor Code section 2699.3(a), in turn, provides:

11 A civil action by an aggrieved employee pursuant to subdivision
12 (a) or (f) of Section 2699 alleging a violation of any provision listed in
13 Section 2699.5 shall commence only after the following requirements
14 have been met:

15 (1) The aggrieved employee or representative shall give written
16 notice by online filing with the Labor and Workforce Development
17 Agency and by certified mail to the employer of the specific provisions
18 of this code alleged to have been violated, including the facts and theories
19 to support the alleged violation.

20 (2) (A) The agency shall notify the employer and the aggrieved
21 employee or representative by certified mail that it does not intend to
22 investigate the alleged violation within 60 calendar days of the postmark
23 date of the notice received pursuant to paragraph (1). Upon receipt of that
24 notice or if no notice is provided within 65 calendar days of the postmark
25 date of the notice given pursuant to paragraph (1), the aggrieved
26 employee may commence a civil action pursuant to Section 2699.

27 19. On May 11, 2018, pursuant to Labor Code § 2699.3(a)(1) of the PAGA, Plaintiff,
28 on behalf of herself and similarly aggrieved employees, gave written notice via online filing with the
California Labor and Workforce Development (LWDA) and via certified mail to Defendants of the
provisions of the Labor Code that have been violated by Defendants' above-described conduct,
including the facts and theories underlying said violations. True and correct copies of Plaintiff's PAGA
claim notice letter dated May 11, 2017 is attached hereto.

20. The LWDA did not notify Plaintiff of its intent to investigate Plaintiff's PAGA
claim within 65 calendar days of the date of Plaintiff's PAGA claim notice correspondence. As such,
Plaintiff has exhausted her administrative remedies under Labor Code section 2699.3(a)(1).

21. Plaintiff contends that Defendants engaged in the following misconduct:

1 **A. Failure to Pay Wages**

2 22. Defendants failed to pay Plaintiff and similarly aggrieved employees for all
3 wages earned, including overtime pay, in violation of Labor Code sections 204 and 510.

4 23. California law requires that employees be paid for all hours they are suffered or
5 permitted to work. California law further provides that an employer must pay no less than one and one-
6 half times an employee's regular rate of pay if the employee works more than eight (8) hours in one
7 workday or more than forty (40) hours in one workweek. California law further requires an employer
8 to pay no less than twice the employer's regular rate of pay if the employee works more than twelve
9 (12) hours in one workday or more than eight (8) hours in the seventh consecutive workday in one
10 workweek. These requirements are codified in Labor Code sections 204, 510, 1194, and 1198.
11 Pursuant to Labor Code section 515(d), for the purpose of computing the overtime rate required to be
12 paid to a nonexempt full-time salaried employee, the employee's regular rate of pay is one-fortieth of
13 the employee's weekly salary.

14 24. During the relevant time period, Plaintiff regularly worked in excess of eight (8)
15 hours in a day and forty (40) hours in a week. Plaintiff and similarly aggrieved employees frequently
16 worked these overtime hours "off the clock" because of Defendants' policy and/or practice of
17 demanding that their employees continue working after they had already "clocked out."

18 25. In violation of Labor Code sections 204, 510, and 1198, Defendants did not pay
19 Plaintiff and similarly aggrieved employees regular or overtime pay for the "off the clock" work they
20 performed, which work was typically in addition to their regular work of eight (8) hours per day and
21 forty (40) hours per week.

22 26. As a result, Plaintiff and similarly aggrieved employees have been deprived of
23 their rightfully earned regular and overtime wages in amounts to be determined at trial.

24 **B. Failed to Pay Wages Upon Discharge**

25 27. Defendants failed to pay all wages owed upon discharge or resignation in
26 violation of Labor Code sections 201 and 202.

27 28. Labor Code sections 201 provides that, if an employer discharges an employee,
28 the wages earned and unpaid at the time of discharge are due and payable to that employee immediately.

1 Labor Code section 202 provides that, if an employee quits his or her employment, his or her wages
2 shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has
3 given seventy-two (72) hours prior notice of his or her intention to quit, in which case the employee is
4 entitled to his or her wages at the time of quitting.

5 29. Plaintiff and similarly aggrieved employees are no longer employed by
6 defendants. In violation of California Labor Code sections 201 and 202, Defendants willfully failed to
7 pay Plaintiffs and similarly aggrieved employees all the wages they were due (including regular and
8 overtime pay for "off the clock" work and work through meal breaks and rest periods) at the time, or
9 within 72 hours or even 30 days after, their employment with Defendants terminated.

10 C. Meal Periods

11 30. Defendants failed to pay Plaintiff and similarly aggrieved employees for missed
12 meal and rest periods in violation of Labor Code sections 226.7 and 512.

13 31. Labor Code section 226.7 provides that no employer shall require an employee
14 to work during any meal period mandated by an applicable IWC Wage Order, and if an employer fails
15 to provide a required meal period, the employer shall pay the employee one additional hour of pay at
16 the employee's regular rate of pay for each work day that the meal period is not provided. Labor Code
17 section 512 and IWC Wage Order 4-2001 provide that an employer may not employ an employee for
18 more than five (5) hours per day without providing the employee a 30-minute uninterrupted meal
19 period. In addition, IWC Wage Order 4-2001 and Labor Code section 512(a) provide that an employer
20 may not employ an employee for more than ten (10) hours per day without providing the employee
21 with a second 30-minute uninterrupted meal period.

22 32. Defendant willfully violated California Labor Code sections 226.7 and 512 by
23 failing to provide the minimum statutory first and second meal periods and/or failing to pay Plaintiff
24 and similarly aggrieved employees in lieu of providing such meal periods.

25 33. As a result of Defendants' conduct, Plaintiff and similarly aggrieved employees
26 were not compensated as required by law in amounts to be determined at trial. Plaintiff and similarly
27 aggrieved employees are entitled to recover the compensation they were unlawfully denied, plus
28 interest thereon, and attorneys' fees and costs.

1 **D. Rest Periods**

2 34. At all relevant times, Labor Code section 226.7 was applicable to Plaintiff and
3 similarly aggrieved employees.

4 35. Labor Code section 226.7 provides that no employer shall require an employee
5 to work during any rest period mandated by an applicable IWC Wage Order, and if an employer fails
6 to provide a required rest period, the employer shall pay the employee one additional hour of pay at the
7 employee's regular rate of pay for each work day that the rest period is not provided. IWC Wage Order
8 4-2001 provides that "[e]very employer shall authorize and permit all employees to take rest periods,
9 which insofar as practicable shall be in the middle of each work period" and that the "rest period time
10 shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½)
12 hours.

13 36. Defendants willfully violated California Labor Code section 226.7 by failing to
14 provide rest periods for every four hours or major fraction thereof worked per day by nonexempt
15 employees, and failing to provide compensation in lieu of providing such rest periods.

16 37. As a result, Plaintiff and similarly aggrieved employees were not compensated
17 as required by law in amounts to be determined at trial.

18 **E. Wage Statements**

19 38. Labor Code section 226(a) requires Defendants, "semimonthly or at the time or
20 each payment of wages," to furnish Plaintiff and similarly aggrieved employees "an accurate itemized
21 statement in writing" showing, among other things, (1) gross wages earned; (2) total hours worked;
22 (3) all deductions; (4) net wages earned; and (5) all applicable hourly rates during the pay period and
23 the corresponding number of hours worked at each hourly rate.

24 39. At all relevant times, Defendants did not provide Plaintiff and similarly
25 aggrieved employees accurate itemized wage statements in compliance with California Labor Code
26 section 226. Defendants knowingly and intentionally failed to provide complete and accurate wage
27 statements. The deficiencies consist of the failure to include: the total number of hours worked by
28

1 Plaintiff and similarly aggrieved employees; total gross and net wages earned for all hours worked; and
2 the corresponding number of hours worked at regular rate and overtime rates.

3 **F. Reimbursement**

4 40. Defendants failed to reimburse Plaintiff and similarly aggrieved employees for
5 necessary expenditures incurred in direct consequence of the discharge of employee duties in violation
6 of Labor Code section 2802.

7 41. Labor Code section 2802 requires that Defendants indemnify their employees
8 for all necessary expenditures or losses incurred by Defendants' employees in direct consequence of
9 the discharge of the employees' duties, or of their obedience to Defendants' directions.

10 42. Plaintiff, and similarly aggrieved employees, were required to use their personal
11 cell phones for work. None of those employees was reimbursed for the additional cost to their cell
12 phone bills. Defendants thereby failed and refused to reimburse Plaintiff and similarly aggrieved
13 employees for such expenditures.

14 **G. Commissions Agreement**

15 43. Following the change in commission calculations in January 2017, Defendants
16 failed to provide Plaintiff and other similarly aggrieved employees with a written contract specifically
17 stating the method of calculation commissions in violation of Labor Code section 2751.

18 44. Labor Code section 2751 also requires an employer to provide a signed copy of
19 the commission agreement to every employee. Defendants failed to comply with this provision as well.

20 45. Pursuant to Labor Code section 2699 of the PAGA, Plaintiff, as an aggrieved
21 former employee, is entitled to seek civil penalties for the foregoing Labor Code violations under the
22 following statutes and regulations: Labor Code sections 203, 210, 226, 226.3, 256, 558, 1102.5 and
23 2699.

24 46. Pursuant to Labor Code section 2699(i), all civil penalties recovered by Plaintiff
25 shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education
26 of employers and employees about their rights and responsibilities under this code, and 25 percent to
27 the aggrieved employees.

1 47. Plaintiff is also entitled to an award of attorneys' fees and costs under Labor
2 Code section 2699(g)(1).

3 **PRAYER**

4 **WHEREFORE**, Plaintiff prays for judgment in her favor and against Defendants, and
5 for relief as follows:

- 6 1. Statutory and civil penalties;
- 7 2. Interest at the maximum legal rate;
- 8 3. Attorneys' fees;
- 9 4. Costs; and
- 10 5. Such other and further relief as the court may deem just and proper.

11
12 DATED: July 16, 2018

Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P.

Asha Dhillon
Neil M. Katsuyama

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14
15
16 By: _____

NEIL M. KATSUYAMA
Attorneys for Plaintiff Carolina Salazar

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May 14, 2018

VIA ONLINE FILING (<https://dir.tfaforms.net/198>)

AND U.S. MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: Carolina Salazar v. The Bay Club Company, et al.; Notice of Labor Code
Violations Pursuant to Labor Code Private Attorneys General Act of 2004
(PAGA CLAIM NOTICE)

Dear PAGA Administrator:

This firm represents Carolina Salazar individually and on behalf of all other similarly aggrieved employees, regarding claims for violations of the California Labor Code by employers The Bay Club Company, LLC, Bay Club Los Angeles, Inc., and Spectrum Clubs, Inc. (collectively, "Bay Club").

Bay Club employed Ms. Salazar from March 2014 through July 2017 in El Segundo, California. Ms. Salazar began as a front-desk receptionist and eventually became a Membership Director.

Pursuant to Labor Code § 2699.3(a) and (c) of the Labor Code Private Attorneys General Act, this correspondence is being filed online with the California Labor and Workforce Development Agency and sent to Bay Club via certified mail to give written notice of the specific provisions of the Labor Code that have been violated by Bay Club, including the facts and theories underlying said violations, in order to allow Ms. Salazar to collect the civil penalties associated with the statutes addressed below on behalf of himself and all others similarly aggrieved through a civil action, if necessary.

Ms. Salazar contends that Bay Club (1) failed to pay Ms. Salazar and similarly aggrieved employees all wages earned, including overtime pay, within their respective pay period, in violation of Labor Code § 204; § 510, and § 3(A) of IWC Wage Order 4-2001; (2) failed to pay all wages owed upon discharge or resignation in violation of Labor Code §§ 201 and 202; (3) failed to provide accurate wage

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TELEPHONE (213) 485-1555 | FACSIMILE (213) 689-1004 | WWW.JONESBELL.COM

Re: Salazar v. The Bay Club Company, et al.; PAGA CLAIM NOTICE
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statements as required by Labor Code § 226; (4) failed to pay Ms. Salazar and all other similarly aggrieved employees for missed meal and rest periods in violation of Labor Code § 226.7, § 512 and §§ 11 and 12 of IWC Wage Order 4-2001; (5) failed to reimburse Ms. Salazar and all other similarly aggrieved employees for their expenses incurred in discharge of their duties, in violation of Labor Code § 2802; and (6) failed to provide Ms. Salazar with a written agreement setting forth how her commissions were computed and paid, in violation of Labor Code § 2751.

For each of the foregoing violations of the Labor Code, Ms. Salazar will seek civil penalties on behalf of herself and similarly aggrieved employees under the following statutes and regulations: Labor Code §§ 203, 210, 226, 226.3, 256, 558, 2699 and Industrial Welfare Commission (IWC) Order 4-2001 (Cal. Code Regs., tit. 8, § 11040).

FACTUAL BACKGROUND

Bay Club operates fitness clubs across California. Carolina Salazar was employed by Bay Club and its predecessors for approximately three and a half years. She started as a front-desk receptionist in March of 2014. She worked part-time, and due to the business needs of having to attend to clients and the company's understaffing, she was not provided rest breaks. Ms. Salazar was interested in fitness but when she asked management about being a trainer, they told her she "did not fit the bill," and suggested she consider a sales position.

She eventually became a Membership Director at the club in El Segundo until she was terminated in July 2017. In such position, she was not provided appropriate meal and rest breaks. Even if she was entitled to take breaks, she was required to be "on call," and often had to continue working during an allotted meal or rest break. On occasion, management would even disrupt Ms. Salazar's lunch workouts to have her meet with a client. In addition, Ms. Salazar often worked "off the clock" before or after work or during such breaks, with her supervisor's knowledge and usually on request.

Membership Directors were compensated pursuant to a detailed compensation plan with various sales incentive options. As a result, many of them, especially those in the South Bay, earned a significant amount of money.

In January of 2017, management told employees like Ms. Salazar that they were changing the commission structure for the Membership Directors. Although they were told that the details of the change would be provided, employees like Ms. Salazar never received an explanation of the changes that were implemented, let alone a revised commission agreement. Instead, they noticed their paychecks getting smaller, without any indication as to why. Ms. Salazar repeatedly asked management about what changes the company had made to her compensation, but was generally ignored.

As a result of the stress from her position, Ms. Salazar started to suffer from anxiety and took a three-week leave of absence. Ms. Salazar learned that while she was gone, management ridiculed

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Ms. Salazar for taking time off to attend to her health needs. Ms. Salazar returned to work from her leave on June 22, 2017. She was terminated on July 6, 2017. Ms. Salazar believed she was due earned commissions after termination, but when she reached out the Human Resources, she was provided a sufficient explanation. Bay Club did not pay Ms. Salazar all the wages she had earned.

Bay Club knew or should have known that Ms. Salazar and the other salespersons were not permitted to take meal breaks (first or second) or rest breaks, that they were not permitted to record the time that they "clocked out" at the end of a shift; that their work hours were not being accurately recorded and that they were being underpaid as a result; and that they were not being furnished with accurate wage statements containing all the information required by California law.

Moreover, Bay Club required Ms. Salazar to routinely use her personal cell phone for business purposes. Ms. Salazar was not reimbursed for the use of her personal cell phone.

At all times Bay Club knew or should have known that they had a duty to compensate Ms. Salazar and the other salespersons for all hours worked, and Bay Club had the financial ability to pay such compensation, but willfully and intentionally failed to do so in order to increase Bay Club's profits.

LABOR CODE VIOLATIONS

The conduct of Bay Club described above constitutes numerous wage and hour violations of the California Labor Code and entitles Ms. Salazar to seek not only damages for said violations but also statutory and civil penalties on behalf of herself and all other similarly aggrieved employees in a civil action pursuant to the Labor Code Private Attorneys General Act, Labor Code §§ 2698 *et seq.* (PAGA). Our client will seek to recover statutory and civil penalties under the following statutes and regulations: Labor Code §§ 203, 210, 226, 226.3, 256, 558, § 2699 and Industrial Welfare Commission (IWC) Order 4-2001 (Cal. Code Regs., tit. 8, § 11040).

Ms. Salazar will seek to recover statutory and civil penalties on behalf of herself and all others similarly aggrieved as follows:

Pursuant to Labor Code § 210, an employer's failure to pay all wages earned by its employees in accordance with Labor Code § 204 subjects an employer to civil penalties of \$100 for each failure to pay the employee, for an initial violation, and \$200 for each failure to pay the employee, plus 25% of the amount unlawfully withheld, for each subsequent violation. Bay Club violated § 204 by failing to pay all wages earned by Ms. Salazar and similarly aggrieved employees (including overtime). Ms. Salazar will seek to recover said penalties.

Pursuant to Labor Code § 203, an employer's failure to pay an employee who is discharged under § 201 or quits under § 202 all wages due and owing promptly upon termination or

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resignation subjects the employer to a statutory penalty of up to 30 times the employee's daily wage, without regard to the actual amounts of unpaid wages. Bay Club violated §§ 201 and 202 by failing to pay all wages due (including overtime pay) to Ms. Salazar at the time of his termination and to other similarly aggrieved employees at the time of their terminations or resignations. Ms. Salazar will seek waiting time penalties under § 203.

In addition, Bay Club's failure to pay all wages due to Ms. Salazar and similarly aggrieved former employees subjects Bay Club to an additional 30-day civil waiting time penalty per employee under Labor Code § 256.

Labor Code § 226(a) requires a California employer to include very specific information on an employee's itemized wage statement, including all gross wages earned, total hours worked, net wages, and applicable hourly overtime rates and overtime hours worked by the employee during the applicable pay period. Bay Club violated the statutory obligations set forth in Labor Code § 226 to provide accurate itemized wage statements to its employees each pay period. Labor Code § 226(e) sets forth the statutory penalties for violation of § 226(a) (\$50 per employee for initial pay period and \$100 per employee for subsequent pay periods, up to \$4000 per employee), which Ms. Salazar will seek to recover. In addition, under Labor Code § 226.3, Bay Club is also subject to a civil penalty for wage statement violations of \$250 per employee per violation for the first citation and \$1,000 per employee per violation for each subsequent citation.

Labor Code § 510 and IWC Wage Order 4-2001, section 3(A), provide that an employer shall pay overtime premium wages to nonexempt employees who work over eight hours in a workday or over 40 hours in a workweek. Bay Club violated Labor Code § 510 and § 3(A) of IWC Wage Order 4-2001 by not paying overtime premium wages to employees, including Ms. Salazar and all others similarly aggrieved, who worked over eight hours in a day or over 40 hours in a workweek. Labor Code § 558 and IWC Wage Order 4-2001 provides for civil penalties against an employer who violates § 510 and IWC Wage Order 4-2001 of \$50 per employee for each pay period in which the employee was underpaid, for an initial violation, or \$100 per employee per pay period for subsequent violations, in addition to recovery of the underpaid wages. Ms. Salazar intends to seek said penalties against Bay Club on behalf of herself and all other similarly aggrieved employees for violation of § 510 and IWC Wage Order 4-2001.

In addition, Ms. Salazar will seek to recover separate civil penalties under § 558 for missed meal and rest periods, as "the civil penalty under section 558 applies to *any provision* regulating hours and days of work in *any order* of the IWC," including the meal and rest period requirement. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1153 (holding that trial court did not err in allowing plaintiff to recover penalties under § 558 for missed rest periods).

For violations of Labor Code provisions for which no civil penalty is specifically provided, the Labor Code establishes a civil penalty of \$100 per employee per pay period for initial

Re: Salazar v. The Bay Club Company, et al.; PAGA CLAIM NOTICE
Department of Industrial Relations
May 14, 2018
Page 5

violation and \$200 per employee per pay period for subsequent violations. Labor Code § 2699(f)(2). Ms. Salazar will seek this civil penalty for Bay Club's violation of Labor Code § 2802 by failing to reimburse Ms. Salazar and similarly aggrieved employees for necessary expenditures incurred in direct consequence of the discharge of employee duties. Ms. Salazar will also seek this civil penalty for Bay Club's violation of Labor Code § 2751 by failing to provide Ms. Salazar with a written agreement specifying how her commissions were calculated.

Ms. Salazar will seek to recover all of the foregoing civil penalties on behalf of herself and all other similarly aggrieved employees under the PAGA.

CONCLUSION

Please take notice that this letter is intended to exhaust the pre-litigation requirements set forth in California Labor Code §§ 2699 *et seq.* Pursuant to Labor Code § 2699.3(a), an employee alleging a violation of the above-referenced statutes must notify his employer and the Labor and Workforce Development Agency (LWDA) before seeking redress in court through a civil action brought under PAGA. The LWDA must then notify the employer and employee within 65 calendar days if it intends to investigate the alleged violation. Labor Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided, then the employee may file a lawsuit invoking the provisions of PAGA, Labor Code §§ 2699 *et seq.* Labor Code § 2699.3(a)(2)(A).

Pursuant to Labor Code § 2699.3(c), an employee alleging a violation of the above-referenced statutes must notify his employer and the Labor and Workforce Development Agency (LWDA) before seeking redress in court through a civil action brought under PAGA. The employer may cure the alleged violation within 33 calendar days. Labor Code § 2699.3(c)(2)(A). If the employee disputes that the alleged violation has been cured, the employee must provide written notice to the LWDA. If the agency determines that the alleged violation has not been cured, or if no notice is provided, then the employee may file a lawsuit invoking the provisions of PAGA, Labor Code §§ 2699 *et seq.* Labor Code § 2699.3(a)(3).

We have enclosed a check for One Hundred and Fifty Dollars (\$150) for filing fees in this matter. Please advise whether the LWDA intends to investigate this matter. This office intends to file a representative action on behalf of Ms. Salazar and all other similarly situated employees for violations of the above-referenced provisions of the Labor Code. Ms. Salazar reserves all of her legal rights and remedies in this matter. Please contact our office should you have any questions.

Re: Salazar v. The Bay Club Company, et al.; PAGA CLAIM NOTICE
Department of Industrial Relations
May 14, 2018
Page 6

Very truly yours,



Neil M. Katsuyama
for

JONES, BELL, ABBOTT, FLEMING & FITZGERALD L.L.P.

NMK:mmc

cc: VIA CERTIFIED MAIL
The Bay Club Company
Bay Club Los Angeles, Inc.
Spectrum Clubs, Inc.
c/o CSC-Lawyers Incorporating Service
(Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

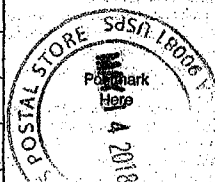
VIA CERTIFIED MAIL
The Bay Club Company
Bay Club Los Angeles, Inc.
Spectrum Clubs, Inc.
1 Lombard Street
San Francisco, CA 94111

VIA CERTIFIED MAIL
Mark Koorennny
32123 Lindero Canyon Road
Suite 204A
Westlake Village, CA 91361

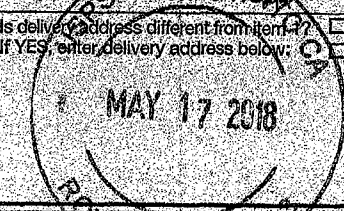
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Street & Apt. No., or PO Box No.	Bay Club Los Angeles, Inc.
City, State, ZIP+4	Spectrum Clubs, Inc. c/o CSC-Lawyers Incorporating Service (Registered Agent for Service of Process) 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833



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1. Article Number (Transfer from service label) 7015 0920 0001 8142 6138		3. Service Type ☐ Adult Signature ☐ Registered Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	
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 Bay Club Los Angeles, Inc.
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☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail™ Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery		

9590 9402 3090 7124 4641 78

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Asha Dhillon, Neil M. Katsuyama (Bar # 205461, 273172) Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P. 601 S. Figueroa Street, Suite 3460 Los Angeles, CA 90017 TELEPHONE NO.: (213) 485-1555 FAX NO.: (213) 689-1004		FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles JUL 19 2018 Sherri R. Carter, Executive Officer/Clerk By <u>T. Rhodes</u> Deputy T. Rhodes	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 825 Maple Ave. MAILING ADDRESS: CITY AND ZIP CODE: Torrance, 90503 BRANCH NAME: Southwest District - Torrance Courthouse		CASE NUMBER: Y0073022 JUDGE: DEPT:	
CASE NAME: Carolina Salazar v. The Bay Club Company, et al.			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 19, 2018

 Neil Katsuyama
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SHORT TITLE:

Carolina Salazar v. The Bay Club Company, et al.

CASE NUMBER

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. 2. Permissive filing in central district. 3. Location where cause of action arose. 4. Mandatory personal injury filing in North District. 5. Location where performance required or defendant resides. 6. Location of property or permanently garaged vehicle. | <ol style="list-style-type: none"> 7. Location where petitioner resides. 8. Location wherein defendant/respondent functions wholly. 9. Location where one or more of the parties reside. 10. Location of Labor Commissioner Office. 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
|--|---|

BY FAX

Auto Tort

Other Personal Injury/Property Damage/Wrongful Death Tort

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	☐ A6070 Asbestos Property Damage ☐ A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
Product Liability (24)	☐ A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons ☐ A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall) ☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) ☐ A7270 Intentional Infliction of Emotional Distress ☐ A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

SHORT TITLE:

CASE NUMBER

Carolina Salazar v. The Bay Club Company, et al.

Non-Personal Injury/Property
Damage/Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	☐ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1, 2, 3
Defamation (13)	☐ A6010 Defamation (slander/libel)	1, 2, 3
Fraud (16)	☐ A6013 Fraud (no contract)	1, 2, 3
Professional Negligence (25)	☐ A6017 Legal Malpractice ☐ A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Wrongful Termination (36)	☐ A6037 Wrongful Termination	1, 2, 3
Other Employment (15)	☒ A6024 Other Employment Complaint Case ☐ A6109 Labor Commissioner Appeals	1, 2, 3 10
Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) ☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) ☐ A6019 Negligent Breach of Contract/Warranty (no fraud) ☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
Collections (09)	☐ A6002 Collections Case-Seller Plaintiff ☐ A6012 Other Promissory Note/Collections Case ☐ A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1, 2, 5, 8
Other Contract (37)	☐ A6009 Contractual Fraud ☐ A6031 Tortious Interference ☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)	☐ A6018 Mortgage Foreclosure ☐ A6032 Quiet Title ☐ A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer- Post-Foreclosure (34)	☐ A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2, 6, 11

LexisNexis® Automated California County Forms

SHORT TITLE: Carolina Salazar v. The Bay Club Company, et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus ☐ A6152 Writ - Mandamus on Limited Court Case Matter ☐ A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	☐ A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	☐ A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	☐ A6141 Sister State Judgment ☐ A6160 Abstract of Judgment ☐ A6107 Confession of Judgment (non-domestic relations) ☐ A6140 Administrative Agency Award (not unpaid taxes) ☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax ☐ A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9
	RICO (27)	☐ A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1, 2, 8
		☐ A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
		☐ A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	☐ A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment ☐ A6123 Workplace Harassment ☐ A6124 Elder/Dependent Adult Abuse Case ☐ A6190 Election Contest ☐ A6110 Petition for Change of Name/Change of Gender ☐ A6170 Petition for Relief from Late Claim Law ☐ A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9

SHORT TITLE: Carolina Salazar v. The Bay Club Company, et al.	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: ☐ 1. ☐ 2. ☒ 3. ☐ 4. ☐ 5. ☐ 6. ☐ 7. ☐ 8. ☐ 9. ☐ 10. ☐ 11.			ADDRESS: 2250 Park Place
CITY: El Segundo	STATE: CA	ZIP CODE: 90245	

Step 5: Certification of Assignment: I certify that this case is properly filed in the Torrance Courthouse - Southwest District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: 7/16/18


(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

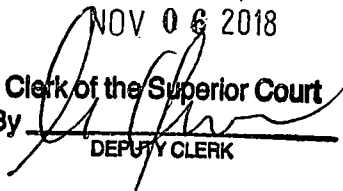
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Exhibit “2”

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Ernesto Sanchez, SBN 278006 /
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JEYSON PINEDA & PATRICIA CALDERON

FILED
SAN MATEO COUNTY

NOV 06 2018
Clerk of the Superior Court
By 
DEPUTY CLERK

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO
UNLIMITED JURISDICTION

JEYSON PINEDA, and PATRICIA CALDERON,

Plaintiffs,

v.

THE BAY CLUBS COMPANY, LLC, BAY CLUB
REDWOOD SHORES, LLC, and DOES 1-10,
inclusive,

Defendants.

Case Number:

18CIV05996

COMPLAINT

- (1) FAILURE TO PAY ALL WAGES
- (2) FAILURE TO PAY OVERTIME
COMPENSATION
- (3) FAILURE TO PERMIT REST
PERIODS
- (4) FAILURE TO PERMIT MEAL
PERIODS
- (5) FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS
- (6) WAITING TIME PENALTIES
- (7) CONSTRUCTIVE DISCHARGE IN
VIOLATION OF PUBLIC POLICY
- (8) PRIVATE ATTORNEY GENERAL
ACT, CAL. LAB. CODE § 2698, ET
SEQ.
- (9) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUSINESS
AND PROFESSIONS CODE
§§ 17200 ET. SEQ.

JURY TRIAL DEMANDED

18 - CIV - 05996
CMP
Complaint
1477904



OFFICE OF THE
CLERK OF THE
SUPREME COURT
STATE OF NEW YORK
JULY 10 2018

RECEIVED
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SUPREME COURT
CIVIL DIVISION

1. Plaintiffs JEYSON PINEDA (hereinafter "PINEDA") and PATRICIA CALDERON (hereinafter "CALDERON") (collectively "PLAINTIFFS") are informed, believe, and hereby allege as follows:

I. INTRODUCTION & JURISDICTION

2. PLAINTIFFS bring this action against THE BAY CLUBS, COMPANY, LLC (hereinafter "DEFENDANT"), BAY CLUB REDWOOD SHORES, LLC (hereinafter "REDWOOD SHORES"), and DOES 1 through 10, inclusive (hereinafter "DOES") (collectively "DEFENDANTS") for compensatory damages, statutory damages, punitive damages, civil penalties, restitution, prejudgment interest, attorneys' fees and costs, and other appropriate and just relief.

3. Jurisdiction is proper in this court because alleged damages exceed \$25,000.00.

4. Venue is proper in this court because, at all relevant times, DEFENDANTS conducted business, PLAINTIFFS were employed, and the unlawful employment practices complained of herein occurred within the County of San Mateo.

II. PARTIES

5. PLAINTIFFS are individuals.

6. DEFENDANT is a California limited liability company doing business as The Bay Club, located at 200 Redwood Shores Parkway, Redwood City, California.

7. REDWOOD SHORES is a California limited liability company doing business as The Bay Club, located at 200 Redwood Shores Parkway, Redwood City, California.

8. DEFENDANTS are an integrated enterprise.

9. DEFENDANTS are joint employers of PLAINTIFFS.

10. PLAINTIFFS' managers, supervisors, and other employees of DEFENDANTS were acting within the course and scope of their employment.

1 11. The actions of PLAINTIFFS' managers, supervisors, and other employees of DEFENDANTS were
2 ratified DEFENDANTS.

3 12. PLAINTIFFS are informed and believe and thereon allege that at all times herein mentioned, the
4 managers, supervisors, and other employees of DEFENDANTS were the agents and employees of
5 DEFENDANTS, and in doing the things hereinafter alleged, were acting within the course and
6 scope of such agency and employment.

7 13. DEFENDANTS exercised direct control over the wages, hours, and working conditions of
8 PLAINTIFFS.

9 14. DEFENDANTS were at all relevant times PLAINTIFFS' employer, covered by California's Labor
10 Code and IWC wage order No. 5.

11 15. PLAINTIFFS are ignorant as to the true names and capacities of defendants sued herein as "DOES
12 1 - 10, inclusive," and therefore sues these by such fictitious names and capacities. Defendants,
13 including each of these fictitiously named DOE Defendants, owned, controlled, managed, or
14 supervised the business for which PLAINTIFFS worked, directly or indirectly exercised operational
15 control over the wages, hours, and working conditions of PLAINTIFFS, and acted within the course
16 and scope of their employment. PLAINTIFFS are informed and believe and thereon allege that
17 each of these fictitiously named defendants is responsible in some manner for the occurrences
18 herein alleged, and that PLAINTIFFS' injuries as herein alleged were proximately caused by the
19 aforementioned Defendants. Defendants, including DOES 1 - 10, held ownership, officer, director,
20 executive, managerial, and/or supervisory positions with the remaining Defendants, and acted on
21 behalf of the remaining Defendants, which included decision-making responsibility for, and
22 establishment of, illegal employment practices for DEFENDANTS which have damaged
23 PLAINTIFFS. Therefore, DEFENDANT, REDWOOD SHORES, and DOES 1 - 10, are
24 "employers" as a matter of law and personally liable on the causes of action alleged herein.
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1 PLAINTIFFS will seek leave of the court to amend this complaint to allege such names and
2 capacities as soon as they are ascertained.

3 **III. STATEMENT OF FACTS**

4 16. On or about April 2017, PINEDA was hired by DEFENDANTS to work as a housekeeper at
5 DEFENDANTS' Redwood City facility.

6 17. On or about May 2017, CALDERON was hired by DEFENDANTS to work as a pool deck cleaner
7 at DEFENDANTS' Redwood City facility.

8 18. PLAINTIFFS' supervisors were Chris, last name unknown, ("Chris") Manager for DEFENDANTS,
9 Ricardo Coelho ("Coelho"), Housekeeping Director for DEFENDANTS, Adam, last name
10 unknown ("Adam"), Manager for DEFENDANTS, and Tyson, last name unknown ("Tyson"),
11 Supervisor for DEFENDANTS. PINEDA was also supervised by Patrick, last name unknown
12 ("Patrick"), Manager for DEFENDANTS and Mauricio, last name unknown ("Mauricio"), Manager
13 for DEFENDANTS. CALDERON was also supervised by Terry, last name unknown ("Terry"),
14 Manager for DEFENDANTS.
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16

17 19. During the course of his employment, PINEDA worked approximately five (5) days per week.

18 20. From approximately April 2017 to June 30, 2017, PINEDA worked from approximately 1:00 p.m.
19 to 6:00 p.m.

20 21. From approximately July 2017 to October 2017, PINEDA worked from approximately 2:30 p.m. to
21 10:00 p.m. or 11:00 p.m.

22 22. On or about November 2017, PINEDA began working from approximately 6:30 a.m. to 2:30 p.m.

23 23. On or about the last few months of his employment, PINEDA worked from approximately 2:30
24 p.m. to 11:00 p.m.

25 24. During the course of his employment, CALDERON worked approximately five (5) days per week.
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1 25. From approximately May 2017 to August 2017, CALDERON worked from approximately 10:00
2 a.m. to 4:00 p.m.

3 26. On or about August 2017, DEFENDANTS transferred CALDERON to work in DEFENDANTS'
4 laundry department.

5 27. From approximately August 2017 to January 2018, CALDERON worked from approximately 2:30
6 p.m. to 11:00 p.m.

7 28. During the course of their employment, DEFENDANTS failed to properly compensate
8 PLAINTIFFS and similarly situated aggrieved employees for all hours worked at their proper rates
9 of pay.

10 29. During the course of their employment, DEFENDANTS improperly rounded the hours worked of
11 PLAINTIFFS and similarly situated aggrieved employees which resulted in not properly
12 compensating them for all hours worked.

13 30. During the course of their employment, DEFENDANTS required PLAINTIFFS to clock in and out
14 for meal breaks that PLAINTIFFS did not take because PLAINTIFFS were working during that
15 time. As a result, DEFENDANTS failed to properly compensate PLAINTIFFS for time spent
16 working while clocked in and out for meal breaks that PLAINTIFFS did not take because
17 PLAINTIFFS were working during that time.

18 31. On or about November 2017, in protest to DEFENDANTS' unlawful timekeeping and
19 compensation practices, CALDERON did not clock in and out for a meal break because she was
20 working during that time. When Chris asked CALDERON why she had not clocked in and out for
21 her meal break, CALDERON told Chris that she was working and had no one to cover her shift to
22 take a meal break. In response, Chris told CALDERON that she still had to clock in and out for
23 meal breaks and prohibited CALDERON from not clocking in and out of meal breaks in the future,
24 even though DEFENDANTS were not providing CALDERON with proper meal breaks.
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1 32. On several occasions, Chris reprimanded PINEDA for not clocking in and out for meal breaks that
2 PINEDA did not take. In response, PINEDA complained to Chris about having to clock in and out
3 for meal breaks that were not actually provided to him. PINEDA also complained to Chris that
4 DEFENDANTS did not assign someone to cover his shift in order to take proper meal breaks.
5 DEFENDANTS failed to address PINEDA'S complaints.

6 33. During the course of their employment, PLAINTIFFS were occasionally required to work more
7 than eight (8) hours in a day and/or forty (40) hours per week.
8

9 34. During the course of their employment, DEFENDANTS failed to pay PLAINTIFFS and similarly
10 situated aggrieved employees at the legal overtime rate for all overtime hours worked over eight (8)
11 hours per day and/or forty (40) hours per week.

12 35. At some point, PINEDA began noticing that DEFENDANTS' timekeeping system was inaccurately
13 recording PINEDA'S start and end times and undercompensating him. When PINEDA complained
14 about this to Chris, DEFENDANTS failed to remedy PINEDA'S complaints.
15

16 36. At some point, PLAINTIFFS began noticing that their hours worked, as reflected on their paystubs
17 were inaccurate. PLAINTIFF noticed that their paystubs accounted for less hours than what
18 PLAINTIFFS actually worked for DEFENDANTS.

19 37. On several occasions, PLAINTIFFS noticed on their paystubs that DEFENDANTS were paying
20 some of their overtime hours worked at their regular rates of pay.
21

22 38. On several occasions, PINEDA complained to DEFENDANTS that he was not being properly paid
23 for all hours worked and requested that DEFENDANTS pay him accurately. DEFENDANTS
24 failed to remedy PINEDA'S complaints.

25 39. On one occasion when PINEDA told Coelho that PLAINTIFFS requested retroactive pay for all
26 unpaid hours worked, Coelho told PINEDA to stop complaining and look for another job if he did
27 not like the way DEFENDANTS were paying PLAINTIFFS.
28

1 40. The last time that CALDERON complained to DEFENDANTS about not getting paid for all hours
2 worked was approximately November 2017.

3 41. During the course of their employment, DEFENDANTS failed to authorize and provide
4 PLAINTIFFS and similarly situated aggrieved employees with all rest periods that they were
5 entitled to take.

6 42. During the course of their employment, DEFENDANTS failed to pay PLAINTIFFS and similarly
7 situated aggrieved employees one additional hour of pay at their regular rate of compensation for
8 each work day that rest periods were not provided.

9 43. During the course of her employment, CALDERON was unaware of any rest break policy at
10 DEFENDANTS. In CALDERON'S mind, sitting down while folding towels for DEFENDANTS
11 was a break. As a result, CALDERON regularly folded towels while on her supposed break.

12 44. On or about November 2017, Patrick asked CALDERON why she was sitting down as
13 CALDERON folded towels. CALDERON told Patrick that she was on break. In response, Patrick
14 did not clarify to CALDERON that she was taking improper rest breaks when folding towels during
15 this time.

16 45. On several occasions, DEFENDANTS observed that CALDERON was working during her
17 supposed rest break but failed to clarify to CALDERON that she was taking improper rest breaks.

18 46. On or about January 2018, Coelho called DEFENDANTS' employees into a meeting.
19 PLAINTIFFS were present during the meeting. During the meeting, Coelho shouted at
20 DEFENDANTS' employees and intimidated them. Coelho told DEFENDANTS' employees,
21 including PLAINTIFFS, that they had to follow his orders at all times, even if they were on break.
22 Coelho told DEFENDANTS' employees, including PLAINTIFFS, that if they did not like his
23 orders, DEFENDANTS' door was wide open for them to leave. PLAINTIFFS interpreted Coelho's
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statement to mean that PLAINTIFFS had no choice but to bear DEFENDANTS' unlawful employment practices.

47. On several occasions, PINEDA complained to DEFENDANTS that Coelho was intimidating workers, including PLAINTIFFS. PINEDA complained to Chris and Adam that Coelho constantly yelled at PLAINTIFFS. DEFENDANTS failed to address PINEDA'S complaints.

48. During the course of their employment, DEFENDANTS failed to authorize and provide PLAINTIFFS and similarly situated aggrieved employees with all meal periods that they were entitled to take.

49. During the course of their employment, DEFENDANTS failed to pay PLAINTIFFS and similarly situated aggrieved employees one additional hour of pay at their regular rate of compensation for each work day that meal periods were not provided.

50. On or about August 2017, upon being transferred to DEFENDANTS' laundry department, CALDERON worked by herself and had no one to cover her shift in order to take proper meal breaks. As a result, CALDERON was forced to eat while working.

51. On or about October 2017, CALDERON complained to DEFENDANTS about not being able to take proper meal breaks and requested that DEFENDANTS assign someone to cover her shift in order to so. After CALDERON complained, DEFENDANTS failed to assign someone to cover her shift in order to take proper meal breaks. CALDERON continued to eat while working.

52. On several occasions, DEFENDANTS interrupted PINEDA'S meal breaks when being reprimanded for attempting to take a lunch break.

53. During the course of their employment, DEFENDANTS failed to issue accurate itemized wage statements to PLAINTIFFS and similarly situated aggrieved employees pursuant to Cal. Labor Code § 226. DEFENDANTS issued paychecks to PLAINTIFFS and similarly situated employees that did not account for all hours worked and at their proper rates of pay.

- 1 54. On or about February 2018, Coelho ordered PINEDA to clean DEFENDANTS' floor tiles with a
2 tooth brush in retaliation for complaining about unlawful working conditions.
- 3 55. On or about February 2018, Coelho called CALDERON falsely accusing PINEDA of not following
4 Coelho's orders. PINEDA is informed and believes that Coelho falsely accused him of not
5 following orders in retaliation for complaining about unlawful working conditions.
- 6 56. On or about February 2018 or March 2018, Coelho called CALDERON continuing to falsely
7 accuse PINEDA of not following orders. Coelho also threatened to call the police on PINEDA the
8 next time PINEDA allegedly did not follow orders. PINEDA is informed and believes that Coelho
9 falsely accused him of not following orders and threatened to call the police on him in retaliation
10 for complaining about unlawful working conditions.
- 11 57. On or about a week before he quit, Coelho threatened PINEDA. PINEDA requested that Coelho
12 not call CALDERON if he had any work-related issues with PINEDA. PINEDA requested that
13 Coelho talk directly to him for work-related issues. In response, Coelho told PINEDA that he had a
14 gun in his car and had a gun license to use it. PINEDA interpreted Coelho's statements as an
15 indirect threat of lethal force. Fearing for his personal safety, PINEDA immediately got up from
16 where he was and left Coelho's presence. PINEDA is informed and believes that Coelho indirectly
17 threatened him with lethal force in retaliation for complaining about unlawful working conditions.
- 18 58. On or about March 2018, DEFENDANTS constructively discharged PINEDA. PINEDA was
19 forced to quit his job with DEFENDANTS due to DEFENDANTS' failure to remedy his
20 complaints about not being properly paid for all hours worked and at his proper rates of pay, and
21 not being provided with proper meal and rest breaks.
- 22 59. DEFENDANTS intentionally created or knowingly permitted working conditions to exist that were
23 so intolerable that a reasonable person in PINEDA'S position would have no reasonable alternative
24 except to resign.
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1 60. DEFENDANTS willfully failed to pay PINEDA and similarly situated aggrieved employees in a
2 timely manner the wages owed to them at the end of their employment as required by Cal. Labor
3 Code §§ 201 through 203.

4 61. As a proximate result of the retaliatory actions by DEFENDANTS against PINEDA, PINEDA has
5 been harmed in that PINEDA suffered the loss of wages, salary, benefits, intangible loss of such
6 employment-related opportunities such as experience in the positions held and sought by PINEDA,
7 and additional amounts of money PINEDA would have received if PINEDA had been properly
8 promoted, received proper wage increases, and increased hours of work. As a result of such
9 retaliation and consequent harm, PINEDA has suffered such damages in an amount according to
10 proof.
11

12 62. On August 1, 2018, PLAINTIFFS submitted a letter online to the Labor and Workforce
13 Development Agency ("LWDA"), informing it of PLAINTIFFS' intent to pursue a Private
14 Attorneys General Act ("PAGA") claim against DEFENDANTS. A copy of this letter is appended
15 hereto, marked "Exhibit A," and is incorporated by this reference as though fully set forth.
16

17 63. As of February 8, 2018, the LWDA has not responded to PLAINTIFFS' August 1, 2018 PAGA
18 letter to inform PLAINTIFFS of its intent to investigate the allegations.
19

20 **IV. CLAIMS FOR RELIEF**
21 **FIRST CAUSE OF ACTION**

22 By PLAINTIFFS Against DEFENDANTS

23 *(Failure to Pay All Wages)*

24 64. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.

25 65. Pursuant to the IWC Wage Order 5, and Cal. Labor Code §§ 201, 202, 204, 500, 512, 1194, and
26 1194.2, DEFENDANTS were required to compensate PLAINTIFFS for all hours worked.
27
28

1 66. PLAINTIFFS request an award in the amount of unpaid wages owed to them by DEFENDANTS
2 for the four (4) years preceding the filing of their complaint, plus interest.

3 67. PLAINTIFFS request an award of reasonable attorneys' fees and costs pursuant to Cal. Labor Code
4 §§ 218.5 and 1194(a).

5 **SECOND CAUSE OF ACTION**

6 By PLAINTIFFS Against DEFENDANTS

7 *(Failure to Pay Overtime Compensation)*

8
9 68. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.

10 69. Pursuant to the IWC Wage Order 5 and Cal. Labor Code §§ 500, 510, and 1194, DEFENDANTS
11 were required to compensate PLAINTIFFS with premium pay for all overtime work performed,
12 which includes time and a half for all hours worked in excess of eight (8) hours per day and/or forty
13 (40) hours per week, and double overtime after twelve hours in any single workday and/or after
14 eight hours on the seventh consecutive day of any workweek.

15
16 70. DEFENDANTS failed to pay PLAINTIFFS their proper overtime wages for hours they worked in
17 excess of eight (8) hours per day and/or in excess of forty (40) hours per week.

18 71. Pursuant to IWC Wage Order 5 and Cal. Labor Code §§ 510 and 1194(a), PLAINTIFFS request an
19 award in the amount of unpaid wages owed to them by DEFENDANTS for the four years preceding
20 the filing of this complaint, plus interest.

21 72. PLAINTIFFS request an award of reasonable attorneys' fees and costs pursuant to Cal. Labor Code
22 §§ 218.5 and 1194(a).

23
24 **THIRD CAUSE OF ACTION**

25 By PLAINTIFFS Against DEFENDANTS

26 *(Failure to Pay Compensation for Unauthorized, Missed & Improper Rest Periods)*

27
28 73. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.

1 74. Pursuant to Cal. Labor Code § 226.7(a) and IWC Wage Order 5, DEFENDANTS were required to
2 authorize and permit employees such as PLAINTIFFS to take rest periods based upon the total
3 hours worked, at a rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof,
4 with no deduction from wages.

5 75. During the course of PLAINTIFFS' employment, DEFENDANTS failed and refused to authorize
6 and permit PLAINTIFFS to take 10-minute rest periods for every four (4) hours worked, or major
7 fraction thereof, in violation of Cal. Labor Code § 226.7(a) and IWC Wage Order 5.
8

9 76. DEFENDANTS further violated IWC Wage Order 5 and Cal. Labor Code § 226.7(b) by failing to
10 pay PLAINTIFFS one hour of pay at PLAINTIFFS' regular rate of pay for each work day rest
11 periods were required but not provided.

12 77. PLAINTIFFS request relief as described below.
13

14 **FOURTH CAUSE OF ACTION**

15 By PLAINTIFFS Against DEFENDANTS

16 *(Failure to Pay Compensation for Unauthorized, Missed & Improper Meal Periods)*

17 78. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.
18

19 79. Pursuant to Cal. Labor Code § 226.7(a), Cal. Labor Code § 512, and IWC Wage Order 5,
20 DEFENDANTS were required to authorize and permit employees such as PLAINTIFFS to take
21 meal periods of thirty (30) minutes per a work period of five (5) hours.

22 80. During PLAINTIFFS' employment, DEFENDANTS failed and refused to authorize and permit
23 PLAINTIFFS to take 30-minute meal periods after five (5) hours of work in violation of Cal. Labor
24 Code § 226.7(a) and IWC Wage Order 5.
25

26 81. DEFENDANTS further violated IWC Wage Order 5 and Cal. Labor Code § 226.7(b) by failing to
27 pay PLAINTIFFS one (1) hour of pay at PLAINTIFFS' regular rate of pay for each work day meal
28 periods were required but not provided.

82. PLAINTIFFS request relief as described below.

FIFTH CAUSE OF ACTION

By PLAINTIFFS Against DEFENDANTS

(Failure to Issue Accurate Wage Statements)

83. PLAINTIFFS re-allege and incorporate by reference the allegations of the paragraphs above.

84. At all times relevant herein, DEFENDANTS failed to issue accurate itemized wage statements that properly and accurately itemize the number of hours worked by PLAINTIFFS and the actual payment due to PLAINTIFFS in violation of Labor Code § 226(a) and IWC Wage Order 5.

85. During PLAINTIFFS' employment, PLAINTIFFS did not receive accurate wage statements because the wage statements that PLAINTIFFS received did not accurately itemize all the hours PLAINTIFFS worked and the proper rates of pay.

86. DEFENDANTS knowingly and intentionally failed to comply with Labor Code § 226(a) and IWC Wage Order 5, causing damages to PLAINTIFFS. These damages, including but not limited to costs expended calculating their true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, PLAINTIFFS elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay periods pursuant to Labor Code § 226(e), up to the statutory maximum amount of \$4,000.00, plus reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

By PINEDA Against DEFENDANTS

(Waiting Time Penalties)

87. PINEDA re-alleges and incorporates by reference the allegations of paragraphs above.

1 88. DEFENDANTS willfully failed to pay PINEDA the wages, overtime, and premiums owed to
2 PINEDA at the end of his employment in a timely manner as required by Cal. Labor Code §§ 201
3 to 203.

4 89. PINEDA requests an award of penalties pursuant to Cal. Labor Code § 203 in an amount equal to
5 30 days of his daily wages at the end of his employment.

6 **SEVENTH CAUSE OF ACTION**

7 By PINEDA Against DEFENDANTS

8 *(Constructive Discharge in Violation of Public Policy)*

9
10 90. PINEDA re-alleges and incorporates by reference the allegations of the paragraphs above.

11 91. PINEDA was subjected by DEFENDANTS to working conditions and retaliation that violated
12 public policy, including Labor Code §§ 98.6, 201, 202, 204, 226.7, 500, 510, 512, 1194, and
13 1194.2.

14 92. DEFENDANTS intentionally created or knowingly permitted these working conditions against
15 PINEDA.

16
17 93. DEFENDANTS' working conditions against PINEDA were so intolerable that a reasonable person
18 in his position would have had no reasonable alternative except to resign.

19 94. PINEDA resigned because of these working conditions.

20 95. As a proximate result of DEFENDANTS' actions against PINEDA, PINEDA has been harmed in
21 that he suffered the loss of wages, salary, benefits, intangible loss of such employment-related
22 opportunities such as experience in the positions held and sought by him, and additional amounts of
23 money PINEDA would have received if he had continued to work for DEFENDANTS, been
24 properly promoted, received proper wage increases, and increased hours of work. As a result of
25 DEFENDANTS' actions and consequent harm, PINEDA has suffered such damages in an amount
26 according to proof.
27
28

EIGHTH CAUSE OF ACTION

By PLAINTIFFS Against DEFENDANTS

(Private Attorney General Act)

96. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.

97. Pursuant to Labor Code §2699, the foregoing violations of statutes and regulations permit PLAINTIFFS to recover civil penalties through this action on behalf of themselves and other current and former employees of DEFENDANTS. Labor Code §2699 provides in relevant part that:

(a) 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 pursuant to the procedures specified in Section 2699.3

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:...(2) If, at the time of the alleged violation, 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.

98. PLAINTIFFS have complied with the procedural requirements specified in Labor Code §2699.3.

1 99. PLAINTIFFS have exhausted all administrative procedures required of him under Labor Code
2 §§2698, 2699 and 2699.3 and are justified as a matter of right in bringing forward this cause of
3 action.

4 100. On August 1, 2018, PLAINTIFFS, through their counsel, pursuant to the Labor Code Private
5 Attorneys General Act of 2004, sent via online submission a letter-notice of violations to the
6 LWDA and via certified mail to DEFENDANTS. A copy of this letter-notice is attached to this
7 Complaint as "Exhibit A."
8

9 101. It has been over 65 days since PLAINTIFFS submitted their letter-notice of violations to the
10 LWDA, and the LWDA has not provided notice to PLAINTIFFS of its intent to investigate the
11 alleged violations detailed herein. Therefore, PLAINTIFFS may commence a civil action pursuant
12 to Labor Code §2699.3(B).
13

14 102. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code,
15 PLAINTIFFS seek all civil penalties, reasonable attorney's fees and costs available pursuant to
16 Labor Code §2699 et seq.

17 103. PLAINTIFFS are likely to have evidentiary support, after research and reasonable opportunity
18 for further investigation and discovery, to further penalties and violations. PLAINTIFFS will amend
19 this complaint, if appropriate, to seek all applicable penalties for violations which the LWDA has
20 failed to investigate and/or failed to issue a citation.
21

22 104. Pursuant to Labor Code §§ 2699(i) and 2699(g)(1), PLAINTIFFS should be awarded twenty-
23 five percent (25%) of all penalties due under California law, plus interest and reasonable attorneys'
24 fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties due and
25 awarded.
26
27
28

NINTH CAUSE OF ACTION

By PLAINTIFFS Against DEFENDANTS

(Unfair Competition in Violation of Cal. Business and Professions Code §§ 17200 et. seq.)

105. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.

106. California Business and Professions Code §§ 17200 et. seq. prohibits acts of unfair competition, which shall mean and include any “unlawful and unfair business practices.”

107. The conduct of DEFENDANTS as alleged herein has been and continues to be unfair, unlawful, and deleterious to PLAINTIFFS, their co-workers, and to the general public. PLAINTIFFS hereby seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. PLAINTIFFS are “persons” within the meaning of Business and Professions Code § 17204, and therefore have standing to bring this suit for restitution.

108. The prompt and proper payment of wages is a fundamental public policy of the State of California.

109. It is also the public policy of the State to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect those employers who comply with the law from losing competitive advantage to other employers who fail to comply with labor standards and requirements.

110. Through the conduct alleged herein, DEFENDANTS acted contrary to these public policies and have thus engaged in unlawful and/or unfair business practices in violation of Business and Professions Code §§ 17200 et. seq., depriving PLAINTIFFS and other employees working for DEFENDANTS, the rights, benefits, and privileges guaranteed to employees under California law.

111. DEFENDANTS regularly and routinely violated the following statutes and regulations with respect to PLAINTIFFS and other employees of DEFENDANTS:

- 1 (a) IWC Wage Order 5, as amended, and Labor Code §§ 201, 202, 204, 500, 510, 558,
2 and 1194 (failure to pay all wages, including all hours worked and overtime);
3 (b) IWC Wage Order 5, Labor Code §§ 226.7 (failure to provide rest periods);
4 (c) IWC Wage Order 5, Labor Code §§ 226.7, 512 (failure to provide meal periods);
5 (d) Labor Code § 226 (failing to provide accurate wage statements to employees at
6 the time of payment); and
7 (e) Labor Code § 203 (failing to pay all wages owed at end of employment).

8
9 112. By engaging in these business practices, which are unfair and unlawful business practices
10 within the meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harmed
11 PLAINTIFFS, other similarly situated past and current employees working for DEFENDANTS,
12 and the general public, and DEFENDANTS have gained an unfair competitive edge.

13 113. Under Business and Professions Code § 17203, PLAINTIFFS are entitled to obtain restitution
14 of these funds on behalf of themselves and other employees working for DEFENDANTS similarly
15 affected by DEFENDANTS' unfair and/or unlawful business practices as set forth herein.

16
17 114. Pursuant to Business and Professions Code § 17202, PLAINTIFFS are entitled to specific relief
18 enforcing the penalty provisions of various Labor Code sections for themselves and for members of
19 the general public in amounts to be proven at trial. Failure to enforce the penalties due would result
20 in the unlawful enrichment of the DEFENDANTS and would promote unfair competition.

21 115. PLAINTIFFS' success in this action will result in the enforcement of important rights affecting
22 the public and will confer a significant benefit upon the general public. Private enforcement of the
23 rights enumerated in this Complaint is necessary, as public agencies have only sought limited
24 enforcement of those rights, if any. The named PLAINTIFFS individually, and by and through
25 counsel, are incurring a financial burden in pursuing this action on behalf of the general public.
26 PLAINTIFFS further seek to enjoin the above-referenced unlawful actions under the Labor Code
27
28

1 and applicable IWC Wage Order. Therefore, PLAINTIFFS seek an award of attorneys' fees and
2 costs of suit pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws.

3 **V. PRAYER**

4 WHEREFORE, PLAINTIFFS pray for judgment as follows:

5 (a) Compensatory and consequential damages, including unpaid wages and wage loss,
6 according to proof;

7 (b) Statutory damages, including wage statement violations pursuant to Labor Code § 226(a),
8 according to proof;

9 (c) Compensation of one hour at the regular rate of pay for each meal or rest period denied in
10 violation of Labor Code § 226.7 and applicable Wage Order, according to proof;

11 (d) Waiting time penalties pursuant to Labor Code §§ 201-203;

12 (e) Civil penalties, reasonable attorney's fees, and costs pursuant to Labor Code §2699 et seq.;

13 (e) Prejudgment interest, pursuant to Cal. Labor Code § 218.6 and other applicable laws,
14 accrued on all due and unpaid wages from the date that wages were due and payable according to
15 proof;
16

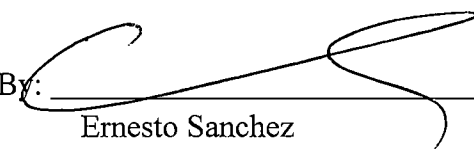
17 (f) Attorneys' fees and costs made payable to the Liberation Law Group, P.C., pursuant to Cal.
18 Civ. Proc. Code § 1021.5; Cal. Labor Code §§ 218.5, 226(e), 1194, 2699(g), and other applicable laws;

19 (g) Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly
20 amounts earned or retained by DEFENDANTS by virtue of their engaging in unlawful conduct,
21 according to proof; and
22

23 (h) For such other and further relief as the court deems proper.
24
25
26
27
28

1 Dated: November 2, 2018

LIBERATION LAW GROUP, P.C.

2
3 By: 

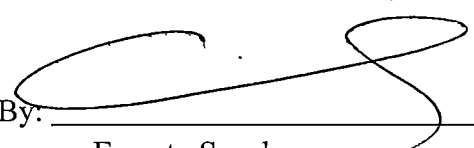
4 Ernesto Sanchez
Attorneys for PLAINTIFFS

5
6 **VI. DEMAND FOR JURY TRIAL**

7 PLAINTIFFS hereby demand a trial by jury.

8
9 DATED: November 2, 2018

LIBERATION LAW GROUP, P.C.

10
11 By: 

12 Ernesto Sanchez
Attorneys for PLAINTIFFS

Exhibit A

Attorneys:

Arlo García Uriarte
Un Kei Wu
Ernesto Sánchez
Daniel P. Iannitelli
Nick Aguilar, Adm. in Fla.



Legal Assistants:

Andrea Ortiz
Lorenzo Barrera Cruz
Ivette Olguin
Vicent Uriarte
Crystina Arreola-Nunez
Mariana Segarra

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

August 1, 2018

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Jeyson M. Pineda & Patricia A. Calderon v. The Bay Clubs Company, LLC
dba The Bay Club Company

Dear PAGA Administrator:

Pursuant to the Private Attorneys General Act of 2004, attached is a list of violations relevant to this action. Further investigation and discovery may result in shedding light to further violations. Please consider this letter and the attached as the notice required by California Labor Code Section 2699.3.

Pursuant to Labor Code 2699(a), Plaintiffs Jeyson M. Pineda and Patricia A. Calderon hereby apply to recover through civil action on behalf of themselves and other current and former aggrieved employees.

Very truly yours,

LIBERATION LAW GROUP, P.C.

Ernesto Sanchez

w/enclosures

///
///
///
///
///

Liberation Law Group P.C.
Mr. Pineda's and Ms. Calderon's PAGA Letter
August 1, 2018

cc:

Mark K. Koorennny, Esq.
General Counsel for The Bay Clubs Company, LLC
31882 Saddletree Drive
Westlake Village, CA 91361-4700

Corporation Service Company (C1592199)
Agent for Service of Process for The Bay Clubs Company, LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

The Bay Clubs Company, LLC Labor Code 2699 Notice of Violations

On or about April 2017, Jeyson M. Pineda (hereafter "Pineda") was hired by The Bay Clubs Company, LLC, doing business as The Bay Club Company (hereinafter "Defendant") to work in Defendant's housekeeping department. Pineda worked at Defendant's facility located in Redwood City, California. Specifically, Pineda was in charge of maintaining Defendant's men's locker room.

From Monday to Friday, Pineda regularly worked eight (8) hour shifts from approximately from 2:30 p.m. to 11:00 p.m. Often, Pineda was required to work overtime hours because Defendant's housekeeping department was understaffed.

During the course of his employment, Defendant failed to properly compensate Pineda for all his hours worked, including overtime hours worked. On several occasions, Pineda noticed that the stated hours worked on his wage statements were inaccurate. Specifically, Pineda noticed that his wage statements stated less hours than those that Pineda actually worked. In addition, Pineda observed that Defendant was paying some of his overtime hours worked at his regular rate of pay.

On several occasions, Pineda complained to Defendant about not being properly paid for all hours worked. Pineda requested that Defendant pay him accurately and compensate him for unpaid hours worked. Defendant failed to remedy Plaintiff's complaints.

On or about May 2017, Patricia A. Calderon (hereinafter "Calderon") was hired by Defendant to work in Defendant's laundry department. Calderon is the mother of Pineda. Calderon worked at Defendant's facility located in Redwood City, California.

From around May 2017 to around January 2018, Calderon regularly worked eight (8) hour shifts from approximately from 2:30 p.m. to 11:00 p.m. From time to time, Calderon was required to work overtime hours.

Similar to Pineda, Defendant failed to properly compensate Calderon for all hours worked, including overtime hours worked. Calderon also noticed that the stated hours worked on her wage statements were inaccurate. Calderon noticed that her wage statements stated less hours than those that Calderon actually worked. Calderon also observed that Defendant was paying some of her overtime hours worked at her regular rate of pay.

At some point, Pineda informed Ricardo, last name unknown ("Ricardo"), Supervisor for Defendant, about what he discovered after reviewing his wage statements and the wage statements of Calderon. Pineda requested that Defendant provide him and Calderon with back pay for all unpaid hours worked. In response, Ricardo told Pineda to stop complaining and disregarded Pineda's complaint. Ricardo subsequently told Pineda that if he did not like the way he was getting paid, that Pineda should look for another job.

In retaliation for complaining about not being properly paid for all hours worked, Defendant retaliated against Pineda by requiring him to work more hours but not properly compensating him for such hours.

On or about March 2018, Defendant constructively discharged Pineda. Pineda was forced to quit his job with Defendant in response to the retaliation that Pineda suffered at work and when Pineda realized that Defendant was not going to remedy his complaints about not being properly paid for all hours worked.

Calderon is currently an employee of Defendant.

Throughout their employment with Defendant, Pineda and Calderon were not authorized and provided with all meal and rest breaks that they were entitled to receive. On multiple occasions, Pineda and Calderon were unable to take proper meal and rest breaks due to being assigned heavy work loads and working in departments that were short-staffed.

Pineda and Calderon are informed and believe that other current and former aggrieved employees of Defendant were subjected to the same wage and hour violations as Pineda and Calderon noted herein. Pursuant to Labor Code § 2699, Pineda and Calderon, on behalf of themselves and all current and former aggrieved employees of Defendant, seek to recover civil penalties against Defendant for Labor Code violations pursuant to, but not limited to:

Defendant violated § 204 by failing to pay Pineda and Calderon all wages due on the designated days of pay. Defendant failed to pay Pineda and Calderon for all hours worked in violation of Labor Code §§ 1194 and 1197. Defendant violated section 4 of the Industrial Welfare Commission Wage Order 5 by failing to pay Pineda and Calderon all hours worked at least at the minimum wage rate.

Violations to Labor Code § 204 – penalties pursuant to §§ 210 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violation to Labor Code § 1197 – penalties pursuant to Labor Code §§ 1197.1, 558, and 2699(f); violations to Wage Order 5 section 4 – penalties pursuant to § 20 of Wage Order 5.

By requiring Pineda and Calderon to work overtime and not properly compensating them for overtime hours worked, Defendant violated Labor Code §§ 223, 510 and 1194(a), which makes it “unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Defendant violated Labor Code §§ 510 and 1194, and section 3 of the Industrial Welfare Commission Wage Order 5 by failing to pay Pineda and Calderon for all overtime hours worked at one and one half times their regular rate of pay.

Violations to Labor Code § 223 - penalties pursuant to Labor Code §§ 225.5 and 2699(f); violations to Labor Code § 510 – penalties pursuant to Labor Code §§ 558 and

2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violations to Wage Order 5 section 3 – penalties pursuant to § 20 of Wage Order 5.

Defendant violated Labor Code §§ 226.7(a) and 512, and sections 11 and 12 of the Industrial Welfare Commission Wage Order 5, by failing to authorize and provide Pineda and Calderon with proper meal and rest breaks and then failing to provide Pineda and Calderon the required one hour compensation when meal and rest breaks are not properly provided.

Violations to Labor Code § 226.7(a) - penalties pursuant to § 2699(f); violations to Labor Code § 512 - penalties pursuant to §§ 558 and 2699(f); violations to § 11 and § 12 of IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.

Defendant violated Labor Code § 226(a) and Wage Order 5 section 7 by failing to provide Pineda and Calderon with accurate itemized wage statements providing at least the following required information: (1) gross wages earned, (2) total actual hours worked by the employee, (3) net wages earned, and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employees.

Violations to Labor Code § 226(a) – penalties pursuant to §§ 226(e), 226.3, and 2699(f); violations to IWC Order 5 section 7 – penalties pursuant to § 20 of IWC Order 5.

Defendant violated Labor Code §§ 201 through 203 by failing to pay Pineda and Calderon all wages and compensation owed within 72 hours of their separation date.

Violations to Labor Code §§ 201 through 203 - penalties pursuant to Labor Code section 2699(f).

Exhibit “3”

COPY

Devon K. Roepcke (SBN 265708)
LAW OFFICES OF DEVON K. ROEPCKE, PC
170 Laurel Street
San Diego, CA 92101
Tel: 619-940-5357
droepcke@lawdkr.com

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

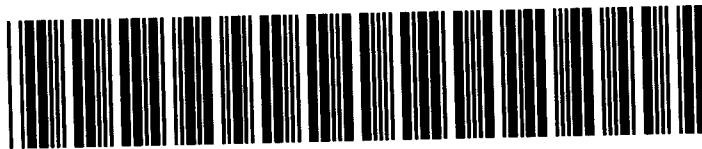
9 8. Such other and further relief as the Court may deem proper and just.

10
11 DATED: November 19, 2020

LAW OFFICES OF DEVON K. ROEPCKE, PC

12
13
14 By: Devon K. Roepcke
15 DEVON K. ROEPCKE, ESQ.
16 Attorneys for Plaintiff
17 Allyson Klipa
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Exhibit “4”



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Aug-16-2018 11:24 am

Case Number: CGC-18-568966

Filing Date: Aug-16-2018 11:21

Filed by: KALENE APOLONIO

Image: 06459335

COMPLAINT

BRETT NICHOLS VS. THE BAY CLUBS COMPANY, LLC ET AL

001C06459335

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO): The Bay Clubs Company, LLC., a Delaware limited liability company, aka Western Athletic Clubs, LLC; Matthew J. Stevens, an individual; Kevin Klipfel, an individual; and DOES 1 through 20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Brett Nichols, an individual, on behalf of himself and all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alejandro P. Gutierrez SBN 107688 Hathaway, Perrett, Webster, et al.
5450 Telegraph Road, Suite 200 (805) 644-7111
Ventura, California 93003

DATE:

(Fecha)

AUG 16 2018

CLERK OF THE COURT
(Secretario)

CASE NUMBER
(Número del caso):

CCG-18-568966

KALINE APOLONIO, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

**HATHAWAY, PERRETT, WEBSTER,
POWERS, CHRISMAN & GUTIERREZ, APC**
Alejandro P. Gutierrez: SBN 107688
5450 Telegraph Road, Suite 200
Ventura, CA 93003
Tel: (805) 644-7111; Fax: (805) 644-8296

FILED
San Francisco County Superior Court

AUG 16 2018

CLERK OF THE COURT
BY: Chalene Johnio
Deputy Clerk

LAW OFFICES OF FRED W. GERBINO JR., APC
Fred W. Gerbino, Jr.; SBN 98078
Fairmont Plaza
50 West San Fernando Street, Suite 400
San Jose, CA 95113
Tel: (408) 298-4034; Fax: (408) 295-6375

**Attorneys for Plaintiff, BRETT NICHOLS, individually
and on behalf the Proposed Class**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

BRETT NICHOLS, an individual, on behalf of
himself and all others similarly situated,

Plaintiffs,

vs.

THE BAY CLUBS COMPANY, LLC., a
Delaware limited liability company, aka
WESTERN ATHLETIC CLUBS, LLC;
MATTHEW J. STEVENS, an individual;
KEVIN KLIPFEL, an individual; and DOES 1
through 20, inclusive,

Defendants.

) CASE NO.:

CGC-18-568966

) Judge:

) Dept.

)

) CLASS ACTION COMPLAINT FOR
) DAMAGES AND INJUNCTIVE RELIEF;

)

) AND

)

) DEMAND FOR JURY TRIAL

)

BY FAX

)

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1 Plaintiff BRETT NICHOLS, ("Plaintiff"), by and through his attorneys, brings this action on
2 behalf of himself, and all other similarly situated non-exempt employees who are or were employed
3 in California by THE BAY CLUBS COMPANY, LLC, a Delaware limited liability company, aka
4 WESTERN ATHLETIC CLUBS, LLC ("Bay Clubs" or "Defendant"); MATTHEW J. STEVENS,
5 an individual, KEVIN KLIPFEL, an individual, and DOES 1 through 20, inclusive (collectively,
6 "Defendants") within the four-year period prior to the filing of this action. Plaintiff hereby alleges,
7 on information and belief, except for information based on personal knowledge, which allegations
8 are likely to have evidentiary support after further investigation and discovery, as follows:

9 **NATURE OF ACTION**

10 1. This California-based class action is brought on behalf of Plaintiff and the Class¹
11 because of Bay Clubs systematic mistreatment of its employees in violation of California's wage and
12 hour laws. Bay Clubs is one of the largest providers of sports and athletic clubs within the State of
13 California, with over 20 clubs in California alone, and has and continues to profit off of the backs of
14 non-exempt workforce by routinely failing to pay all wages owed to employees, including failing to
15 pay the correct amount of accrued vacation to employees whose employment with Bay Clubs ceases
16 and failing to pay proper overtime to its employees by not including non-discretionary bonuses
17 earned in the calculation of the overtime rate of pay. Bay Clubs also fails to properly reimburse its
18 employees for all reasonable and necessary expenses incurred by its employees, including expenses
19 associated with washing/cleaning the mandated work uniforms utilized by Bay Clubs' employees.

20 2. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
21 Defendant Matthew J. Stevens held (among other possible positions) the positions of President and
22 CEO of Bay Clubs.

23 3. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
24 Defendant Kevin Klipfel held (among other possible positions) the position of Chief Operating
25 Officer of Bay Clubs.

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27
28 ¹ The "Class" and "Sub-Classes" are defined in paragraphs 39.

1 4. Plaintiff is informed, believes, and thereon alleges that Matthew J. Stevens, Kevin
2 Klipfel and Bay Clubs and Does 1 through 20, inclusive, (collectively "Defendants") are primary
3 defendants in this action and, at all times pertinent hereto, were and are citizens of the forum state of
4 California.

5 5. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
6 Defendants Matthew J. Stevens and Kevin Klipfel and Does 1 through 20, were the owner(s),
7 director(s), officer(s), or managing agent(s) acting on behalf of employer, Bay Clubs, and who, in
8 said respective capacities and positions, are liable for the claims alleged herein pursuant to Labor
9 Code §558.1 in that they were and are an "other person" acting on behalf of Bay Clubs, who
10 violated, or caused to be violated, certain Labor Code sections stated herein.

11 6. In order to redress the harms suffered, Plaintiff, on behalf of himself and the Class,
12 bring claims associated with Defendants' violations of the California Labor Code and applicable
13 IWC Wage Order, including : (1) failure to provide accurate wage statements in violation of Labor
14 Code §226; (2) failure to timely pay wages when due at termination in violation of Labor Code
15 §§201 and 202; (3) violation of the Unfair Competition Law ("UCL") pursuant to Business &
16 Professions Code §17200, *et seq.*; (4) failure to timely pay all accrued and unpaid vacation pay in
17 violation of Labor Code §227.3; (5) failure to pay all minimum, regular rate and overtime wages;
18 and (6) failure to timely reimburse business expenses in violation of Labor Code §§2802.

19 JURISDICTION AND VENUE

20 7. Federal district courts do not have original jurisdiction over the matter pursuant to 28
21 U.S.C. §§1331, 1332, 1441, because this action does not arise under the Constitution, laws, or
22 treaties of the United States and the dispute is not between "citizens of different states."

23 8. Plaintiff is a citizen of California because his domicile is in California.

24 9. Defendant Bay Clubs is a citizen of California because its "principal place of
25 business" is in California. 28 U.S.C. §1332(c)(1). Specifically, its corporate "nerve center" where
26 its officers direct, control, and coordinate the corporation's activities, is located at Defendant's
27 headquarters, 1 Lombard Street, California 94111. Per Bay Clubs, more than 90 percent of its

1 sports and athletic clubs are located in California. Accordingly, Bay Clubs consolidated its "key
2 functions and management" at its headquarters in California, its largest market

3 10. On information and belief, Defendants Matthew J. Stevens and Kevin Klipfel are
4 citizens of California because their respective domiciles are in California.

5 11. The classes of person whom Plaintiff seeks to represent are non-exempt employees
6 who were and/or are employed by Defendants in California and, based on information and belief,
7 more than two-thirds of the proposed class members are citizens of California. The principal injuries
8 resulting from the alleged conduct of Defendants were and are incurring in California. Plaintiff is
9 unaware of another class action with the same factual allegations against Defendants on behalf of the
10 same or other similarly-situated persons having been filed during the 3-year period preceding the
11 filing of this Complaint.

12 12. This Court has jurisdiction over Defendants because they conduct substantial
13 business in California and have intentionally availed themselves of the laws and markets of
14 California through the operation of their business in California.

15 13. Venue is proper in this Court because a significant portion of the conduct that gives
16 rise to Defendants' liability, as alleged herein, occurred in San Francisco County. Defendant Bay
17 Clubs' headquarters are located in San Francisco County and it conducts substantial business in San
18 Francisco County.

19 **THE PARTIES**

20 **Plaintiff Brett Nichols**

21 14. Plaintiff Brett Nichols is over eighteen years of age and at all relevant times is and
22 was a resident of Santa Clara County, California. Mr. Nichols, a well-established professional
23 trainer with more than fourteen years' experience, was a dedicated non-exempt employee of Bay
24 Clubs in one of its Northern California facilities for approximately nine years, ending his
25 employment in or about February 2018. Mr. Nichols was a non-exempt employee who was paid on
26 an hourly basis at the rate of \$66.00 per hour.

27 15. At all relevant times, Defendants required Plaintiff and the members of the proposed
28

1 class, namely, non-exempt employees who worked for Bay Clubs during the four period prior to the
2 filing of the complaint in this action, to wear uniforms, including shirts which Bay Club provided
3 with a Bay Club mandated logo. During the Class Period,² Bay Club failed to reimburse Mr. Nichols
4 and members of the proposed class for the cost of purchasing and washing/cleaning the Bay Club
5 mandated clothing items, in clear violation of Labor Code §2802. During the Class Period,
6 Defendant maintained a written vacation policy that provides/provided that vacation pay out upon an
7 employee termination would be paid out at the rate of \$15.00 per hour, rather than at the employee's
8 last hourly rate of pay. During the Class Period, Defendants failed to pay out accrued vacation to
9 employees whose employment with Bay Clubs was terminated as mandated by Labor Code §227.3
10 and failed to pay all wages owed when Plaintiff and other non-exempt employees ceased working
11 for Bay Clubs in violation of Labor Code §§ 201 and 202. Among other violations, Defendants
12 knowingly and intentionally failed to include non-discretionary bonuses earned and paid in
13 calculating the regular rate of pay for purposes of overtime calculation under the applicable
14 Industrial Welfare Commission ("IWC") Wage Order 10 and failed to provide Plaintiff Nichols and
15 members of the proposed class with accurate, itemized wage statements, as required by Labor Code
16 §226.

17 16. Because of Defendants' wage and hour violations, Plaintiff Nichols has suffered
18 damages, and he therefore brings this class action to enforce compliance of the Labor Code and
19 recover wages, restitution, civil penalties, and attorneys' fees and costs.

20 Defendants

21 17. Defendant Bay Clubs is a Delaware Limited Liability Company, with its corporate
22 office located at 1 Lombard Street, San Francisco, California 94111.

23 18. Per the Bay Clubs' Statement of Information filed with the California Secretary of
24 State on August 16, 2016 and the Statement of No Change (Limited Liability Company) filed with
25
26
27

28 ² The "Class Period" is defined in paragraph 38 below.

1 the California Secretary of State on May 30, 2018, Defendant Matthew J. Stevens, is identified as the
2 Manager and Defendant Kevin Klipfel is identified as the Secretary, respectively, of Bay Clubs.

3 19. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
4 Defendants Matthew J. Stevens, Kevin Klipfel, and Does 1 through 20, were the owner(s),
5 director(s), officer(s), or managing agent(s) acting on behalf of employer, Bay Clubs, and who, in
6 said respective capacities and positions, are liable for the claims alleged herein pursuant to Labor
7 Code §558.1 in that they were and are an "other person" acting on behalf of Bay Clubs, who
8 knowingly and willfully violated, or caused to be violated, certain Labor Code sections stated herein.

9 20. Based on information and belief, Defendants had the authority to, directly or
10 indirectly, or through an agent or other person, employ or exercise control over Plaintiff's and the
11 Classes' wages, hours, and working conditions.

12 21. Based on information and belief, Defendants had knowledge of the wage-and-hour
13 violations alleged herein and each defendant had the power to prevent the violations from occurring.
14 Having knowledge of the wage-and-hour violations set forth in this Complaint, Defendants could
15 have, but failed to prevent the violations from occurring.

16 22. At all relevant times, Defendants did, and still do, transact and conduct business in
17 the State of California, including, but not limited to, the County of San Francisco, and within the
18 jurisdiction of this Court.

19 23. At all times mentioned in the causes of action alleged herein, each defendant was an
20 agent and/or employee of each other defendant. In doing the things alleged in the causes of action
21 stated herein, each defendant was acting within the course and scope of this agency or employment
22 and was acting with the consent, permission, and authorization of each of the remaining defendants.
23 All actions of each defendant, as alleged in the causes of action stated herein, were ratified and
24 approved by every other defendant or its officers or managing agents.

25 24. Plaintiff does not know the true names and capacities of Defendants Does 1 through
26 20 inclusive, and therefore sues them by these fictitious names. Plaintiff will amend this Complaint
27 to include their names and capacities once they are known. Plaintiff is informed and believes, and on
28

1 that basis alleges, that each of the Defendants designated as a DOE is legally responsible in some
2 manner for the occurrences alleged in this Complaint, and unlawfully caused the injuries and
3 damages to Plaintiff and the Class as alleged in this Complaint.

4 **BAY CLUBS UNLAWFUL CONDUCT**

5 **Background**

6 25. Bay Clubs is a hospitality company and provider of fitness and leisure facilities and
7 programming in California, with headquarters in San Francisco, and with approximately 22 locations
8 throughout California. Based on information and belief, Bay Clubs operates at least four of those
9 facilities in San Francisco, California, and employs members of the Class at each California facility.

10 26. The non-exempt hourly employee positions that constitute the Class include, for
11 example: childcare personnel, reception desk, housekeeping, facilities painter, membership sales
12 representatives, pilates instructor, lifeguard, tennis instructor, golf instructor, fitness trainer, personal
13 trainer coach, massage therapists, facilities technician, staff accountant, among others. As described
14 in more particularity in paragraphs below, the Class includes all hourly California Employees,
15 meaning all non-exempt current and former employees of Bay Clubs, who were employed by Bay
16 Clubs in California during the Class Period.

17 **Unpaid Overtime**

18 27. Defendants required Plaintiff and the Class to work over 8 hours per day, and/or 40
19 hours per week. Defendants had a practice of paying out non-discretionary bonuses to Plaintiff and
20 members of the Class who worked over 8 hours per day, and/or 40 hours per week. When
21 calculating the regular rate of pay for purposes of overtime calculation under the IWC Orders, non-
22 discretionary bonuses paid to members of the Class were not calculated into the formula.

23 **Vacation Pay In Violation of Labor Code §227.3**

24 28. At all relevant times, Defendants had a policy and practice of paying accrued and
25 unused vacation pay to Plaintiff and the Class at the rate of \$15.00 per hour and not at the Plaintiff's
26 and the Class Members' regular rate of pay at the time they terminated their employment from Bay
27 Clubs, in violation of Labor Code § 227.3.

1 **Unreimbursed Expenses In Violation of Labor Code §2802**

2 29. During the Class Period, Defendants maintained a practice and policy of mandating
3 that Plaintiff and Class members wear Bay Club provided uniforms, including shirts, black athletic
4 pants or shorts and athletic shoes. While Defendants provided Plaintiff with some items of the
5 mandated uniforms, Defendants failed to reimburse Plaintiff and the members of the Class for the
6 cost of items some of the required uniform items and failed to reimburse for the cost of
7 washing/cleaning the articles of clothing, all in violation of Labor Code § 2802.

8 **Pendent Violations**

9 30. Due to Defendants' failure to lawfully include non-discretionary bonuses in the
10 calculation of overtime as required the applicable IWC Wage Order and the failure to lawfully pay
11 all vacation wages in compliance with Labor Code § 227.3, Defendants violated California laws
12 governing wage statements and the timely full payment of all wages due.

13 31. Defendants knowingly and intentionally failed to provide Plaintiff and the Class with
14 accurate, itemized wage statements, as required by Labor Code §226, by failing to accurately report
15 gross and net wages earned by Plaintiff and the Class. Because of the inaccurate wage statements,
16 Plaintiff and the Class have been harmed because their wages owed were not properly calculated and
17 they were never made aware of what their true wages were and how they were calculated.

18 32. Plaintiff and members of the Class, which include employees no longer employed by
19 Defendants, were not timely paid all earned wages due immediately upon discharge and/or within 72
20 hours of resignation as required by California law.

21 33. Common evidence exists to prove Defendants' Labor Code violations, for example,
22 the Classes' wage statements and payroll records.

23 34. Because of Defendants' wage and hour violations, Plaintiff and the Class have
24 suffered damages, and therefore bring this class action to enforce compliance of the Labor Code and
25 applicable IWC Wage Order 10, and to recover wages, restitution, civil penalties, and attorneys' fees
26 and costs.

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1 quit from the employ of Defendants;

2 (d) Unreimbursed Expense Sub-Class: Those members of the Class to whom
3 Defendants mandated a uniform or item of apparel to be worn during working hours; and

4 (e) Wage-Statement Sub-Class: Those members of the Class to whom Defendants
5 provided a wage statement at any time during the period of one year prior to the filing of the
6 action, up to and including the present.

7 40. Plaintiff is informed, believes, and thereon alleges that the number of members of
8 the Class is in excess of 1,000. Consequently, the Class is so numerous that joinder of all members
9 individually would be impractical.

10 41. Plaintiff is a member of the Non-Exempt employees comprising the Class and was
11 employed with Defendants at their facilities and job sites at various times during the Class Period.

12 42. Plaintiff has no conflicts of interest with his fellow members of the Class and has
13 been able, and will continue to be able, to fairly and adequately protect the interests of all members
14 of the putative Class.

15 43. Plaintiff is informed, believes and thereon alleges that Defendants' unlawful
16 employment policies and practices, raise questions of fact common to the members of the Class,
17 including, whether Defendants:

18 (a) Failed to timely pay Plaintiff and members of the Class all their earned wages
19 and compensation;

20 (b) Failed to furnish to Plaintiff and members of the Class accurate, itemized wage
21 statements compliant with Labor Code §226;

22 (c) Failed to reimburse Plaintiff and members of the Class for expenses incurred by
23 them to purchase and wash/clean uniforms and apparel that Defendants mandated
24 Plaintiff and members of the Class to wear while working for Bay Clubs;

25 (d) Failed to timely pay Plaintiff and members of the Class all of their earned
26 wages, compensation and benefits immediately upon termination of their employment or
27 within seventy-two hours of them quitting; and/or

1 (e) Failed to pay Plaintiff and members of the Class for accrued and unused
2 vacation upon termination of the employment at their last regular rate of pay as required
3 by Labor Code § 227.3

4 44. Plaintiff is informed, believes and thereon alleges that Defendants' unlawful
5 employment policies and practices raise numerous questions of law common to the members of the
6 Class, including, without limitation:

7 (a) Whether the provisions of the Labor Code and 8 Cal. Code Regs. §11100 include
8 the employer's obligation to pay all earned wages and to pay all such earned wages at the
9 time of the termination of a member of the Class' employment;

10 (b) Defendants' legal obligation to pay accrued and unused vacation pay at the
11 regular rate of pay at the time of termination of Plaintiff and the member of the Class'
12 employment;

13 (c) Defendants' legal obligation to reimburse members of the Class for necessary
14 expenses incurred for uniforms and apparel, including the cost of washing/cleaning
15 uniforms or apparel required to be worn by Plaintiff and members of the Class during work
16 hours;

17 (d) Whether Defendants' obligation to provide Labor Code § 226 compliant wage
18 statements to their employees is applicable to Plaintiff and members of the Class;

19 (e) The requirements for a wage statement to be compliant with Labor Code §226;
20 and,

21 (f) What remedies, including restitution, compensatory damages, statutory and civil
22 penalties, additional wages and disgorgement of revenue, are available under California law
23 to members of the Class who were not paid all earned wages, compensation and benefits;
24 were not timely paid all earned minimum, regular and overtime wages, compensation and
25 benefits; were not paid all wages and premium compensation earned at the time of the
26 termination of their employment relationship with Defendants; were not reimbursed all
27 expenses incurred in the performance of their work for Defendants; and were not provided
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1 lawful wage statements.

2 45. Plaintiff is informed, believes and thereon alleges that his claims are typical of the
3 claims of the members of the Class because they encompass the same unlawful policies and
4 practices of Defendants; they arise out of the same alleged course of conduct by Defendants; are
5 based upon the same legal theories as the claims of the Class; and the legal issues raised under the
6 California state laws as a result of Defendants' conduct apply equally to Plaintiff and members of the
7 Class.

8 46. Plaintiff is informed, believes and thereon alleges that all members of the Class are
9 similarly situated in that, throughout their employment, they were subject to Defendants' violations
10 of California labor law, including that Defendants maintained uniform policies and practices
11 whereby Defendants regularly and systematically:

12 (a) Failed to pay Plaintiff and members of the Class all earned wages and
13 compensation, including overtime wages;

14 (b) Failed to timely pay Plaintiff and members of the Class all of their earned
15 wages and compensation in the form of vacation pay upon termination of Plaintiff's and
16 members of the Class' work relationship with Defendants;

17 (c) Failed to furnish to Plaintiff and members of the Class Labor Code §226
18 compliant wage statements;

19 (d) Failed to timely pay Plaintiff and members of the Class all of their earned wages,
20 compensation and benefits immediately at the termination of their employment or within
21 seventy-two hours of them quitting; and,

22 (e) Failed to reimburse Plaintiff and members of the Class for expenses related to
23 purchasing and washing/cleaning uniforms and clothing apparel Plaintiff and members of
24 the Class were required to wear during their work for Defendants

25 47. Such uniform policies and practices have affected each member of the Class,
26 including Plaintiff, in a similar fashion.

27 48. Plaintiff is informed, believes and thereon alleges that the prosecution of separate
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1 actions by or against individual members of the Class would create a risk of substantial prejudice
2 because separate actions could result in the imposition of incompatible standards of conduct on the
3 party opposing class certification through inconsistent judgments or varying adjudications.

4 49. The questions of law and fact common to the members of the Class predominate
5 over any questions affecting only individual members, and a class action is superior to other
6 available methods for the fair and efficient adjudication of the controversy in that members of the
7 Class have little or no interest in individually controlling the prosecution of separate actions. The
8 putative Class member's individual claims are of a magnitude which make pursuit thereof, on an
9 individual basis, economically unfeasible and dissuade prosecution of such meritorious claims as the
10 economic benefit is far outweighed by the justified concern for retaliatory conduct on the part of
11 Defendants and/or concern for impaired future job prospects as a result of the perceived stigma
12 associated with having advanced litigation against one's previous employer.

13 50. Plaintiff is informed, believes and thereon alleges that it is desirable to concentrate
14 the litigation of the claims in this court because substantial employment activities for which the
15 claims arise took place within the venue of the above-entitled court and Defendants otherwise
16 conduct business in this jurisdiction.

17 51. Plaintiff is informed, believes and thereon alleges that this action is manageable as a
18 class action because, compared with any other method, such as consolidation of individual actions, a
19 class action is fairer and more efficient, avoids the potential for inconsistent findings of fact and/or
20 application of law, and would not present the parties, the members of the putative class, or the Court
21 with significant procedural or administrative difficulties in management thereof as a class action.

22 52. Furthermore, a class action would maximize judicial efficiency and minimize the
23 inconvenience to both party and non-party witnesses who would otherwise have to testify in a
24 multitude of proceedings.

25 53. Plaintiff has retained the respective legal services of Alejandro P. Gutierrez of
26 Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, APC; and Fred W. Gerbino, Jr. of the

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1 Law Office of Fred W. Gerbino Jr., APC, who are competent and experienced in complex wage-and-
2 hour class action litigation.

3 54. Plaintiff's counsel has litigated numerous class actions on behalf of employees
4 asserting wage-and-hour claims under California and federal law. Plaintiff's counsel intends to
5 commit the necessary resources to prosecute this action vigorously for the benefit of all Class
6 members.

7 55. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b), to amend
8 or modify the Class description with greater specificity or further division into subclasses or
9 limitation to particular issues.

10 56. Plaintiff brings this action on behalf of himself and all others similarly-situated
11 pursuant to California Code of Civil Procedure §382 because there is a well-defined community of
12 interest in the litigation and the proposed Class is easily ascertainable.

13 Numerosity

14 57. The potential members of the Class are so numerous that joinder of all the members
15 is impracticable. While the precise number of members of the Class has not been determined,
16 Plaintiff is informed and believes Defendants have employed more than one thousand (1,000)
17 California Employees during the last four years.

18 58. Based on information and belief, Defendants' employment records evidence the
19 number and location of the Class.

20 Commonality and Predominance

21 59. There are questions of law and fact common to the Class that predominate over any
22 questions affecting only individual class members. These common questions of law and fact
23 include, without limitation:

24 (a) Whether Defendants violated IWC Wage Order 10 and California Labor Code §
25 1194 by failing to properly compensate members of the Class overtime, by failing to include
26 non-discretionary bonuses in the calculation of the regular rate of pay for purposes of
27 calculating overtime.

1 (b) Whether Defendants violated California Labor Code §§201 and 202 by failing to
2 pay all members of the Class all wages at the time of his or her discharge or within 72 of his
3 or her resignation;

4 (c) Whether Defendants failed to provide accurate itemized wage statements to the
5 Class in violation of Labor Code §226 and the applicable IWC Wage Order 10;

6 (d) Whether Defendants violated California Labor Code § 227.3 by failing to pay
7 members of the Class all accrued and unused vacation pay at the last regular rate of pay of
8 Plaintiff and the members of the Class;

9 (e) Whether Defendants failed to reimburse Plaintiff and all members of the Class
10 for the cost of purchasing and washing/cleaning uniforms or clothing apparel, including
11 athletic pants and shorts, and purchasing athletic shoes which Defendants required Plaintiff
12 and the members of the class to wear while working for Defendants;

13 (f) Whether Defendants violated the UCL; and

14 (g) Whether Plaintiff and the Class have been harmed and the proper measure of
15 relief.

16 **Typicality**

17 60. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and all
18 members of the Class sustained injuries and damages arising out of and caused by Defendants'
19 common course of conduct in violation of laws, regulations that have the force and effect of law, and
20 statutes as alleged.

21 **Adequacy of Representation**

22 61. Plaintiff will fairly and adequately represent and protect the interests of the Class.
23 Counsel who represents Plaintiff are competent and experienced in litigating large employment class
24 actions.

25 **Superiority of Class Action**

26 62. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of the Class is not practicable, and questions of
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1 law and fact common to the Class predominate over any questions affecting only individual
2 members of the Class. Each member of the Class has been damaged and is entitled to recovery
3 because of Defendants' uniform unlawful policy and/or practices described herein. There are no
4 individualized factual or legal issues for the court to resolve that would prevent this case from
5 proceeding as a class action. Class action treatment will allow those similarly situated persons to
6 litigate their claims in the manner that is most efficient and economical for the parties and the
7 judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
8 management of this action that would preclude its maintenance as a class action.

9 **FIRST CAUSE OF ACTION**

10 **Failure to Pay Overtime in Violation of Labor Code §1194**

11 **(Against All Defendants on Behalf of Plaintiff and the Class)**

12 63. Plaintiff realleges and incorporates herein by reference each allegation in the
13 preceding and subsequent paragraphs.

14 64. Defendants routinely required Plaintiff and the Class to work more than eight (8)
15 hours per day and/or forty (40) hours per week. Defendant paid non-discretionary bonuses to
16 Plaintiff and members of the Class but did not include the non-discretionary bonuses in the
17 calculation of the regular rate of pay for purposes of calculating the overtime rate of pay.

18 65. Defendants failed to fully compensate Plaintiff and the Class for all overtime wages
19 they earned.

20 66. Plaintiff is informed and believes, and thereon alleges that the failure of Defendants
21 to fully compensate Plaintiff and the Class for overtime work was willful, purposeful, and unlawful
22 and done in accordance with the policies and practices of Defendants' operations.

23 67. As a proximate cause of the aforementioned violations, Plaintiff and the Class have
24 been damaged in an amount according to proof at time of trial. Plaintiff and the Class are entitled to
25 recover the unpaid balance of wages owed, penalties, including penalties available pursuant to
26 California Labor Code §558, plus interest, reasonable attorney fees and costs of suit according to the
27 mandate of California Labor Code §§1194, *et seq.*

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1 74. With respect to accurately reporting gross and net wages earned and the total hours
2 worked by the employee, an employer must pay an employee all wages that are due for a pay period
3 on the pay day for that pay period. Cal. Lab. Code §§204, *et seq.*

4 75. Defendants failed to pay Plaintiff and the Class the non-discretionary bonus portion
5 of the overtime rate of pay and failed to report the same on their respective wage statements as
6 required by Labor Code §226. Accordingly, violated Labor Code §226 by failing to accurately
7 report gross and net wages earned by the employees.

8 76. Labor Code §§226(e) and (h) provide for the remedy for wage statement violations:

9 (e) An employee suffering injury as a result of a knowing and
10 intentional failure by an employer to comply with subdivision (a) is entitled to
11 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
12 period in which a violation occurs and one hundred dollars (\$100) per employee
13 for each violation in a subsequent pay period, not exceeding an aggregate
14 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs
15 and reasonable attorney's fees.

16 (h) An employee may also bring an action for injunctive
17 relief to ensure compliance with this section and is entitled to an award of costs
18 and reasonable attorney's fees.

19 77. Defendants have injured Plaintiff and the Class and made it difficult to calculate the
20 unpaid wages owed, and losses and expenditures not indemnified by Defendants (including wages,
21 interest and penalties thereon) due Plaintiff and the Class.

22 78. Because of Defendants unlawful acts, Plaintiff and the Class are entitled to bring this
23 action to recover damages, ensure compliance and recover costs and reasonable attorneys' fees.
24 Lab. Code §226(e)-(h).

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Timely Pay Wages Due in Violation of Labor Code §§201, 202, and 203**

3 **(Against All Defendants on behalf of Plaintiff and former employees in the Class)**

4 79. Plaintiff realleges and incorporates herein by reference each allegation in the
5 preceding and subsequent paragraphs.

6 80. Labor Code §201 provides in pertinent part: "If an employer discharges an
7 employee, the wages earned and unpaid at the time of discharge are due and payable
8 immediately...." Labor Code §201(a).

9 81. Labor Code §202(a) provides, "If an employee not having a written contract for a
10 definite period quits his or her employment, his or her wages shall become due and payable not
11 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
12 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

13 82. Labor Code §203 provides in pertinent part: "If an employer willfully fails to pay ...
14 in accordance with Sections 201 ... [or] 202 ... any wages of an employee who is discharged or
15 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the
16 same rate until paid ... but the wages shall not continue for more than 30 days."

17 83. Defendants failed to pay earned wages to Plaintiff and members of the Class upon
18 their termination and/or within 72 hours of the last day of their employment with Defendants. More
19 than 30 days have passed since Plaintiff t and members of the Class have been terminated and/or
20 quit Defendants' employ.

21 84. Because of Defendants' willful conduct in not paying all wages due upon discharge
22 and/or resignation of employment, Plaintiff and the Class are entitled to 30-days' wages as a
23 penalty under Labor Code §203, plus interest thereon. Pursuant to Labor Code §218.5, Plaintiff
24 Rust and the Class are also entitled to attorneys' fees and costs.

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FIFTH CAUSE OF ACTION

Violation of The Unfair Competition Law Business & Professions Code §17200, *et seq.*

(Against All Defendants Except Defendants Matthew J. Stevens and Kevin Klipfel,

on Behalf of Plaintiff and the Class)

85. Plaintiff realleges and incorporates herein by reference each allegation in the preceding and subsequent paragraphs.

86. Defendants engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et seq.* The actions of Defendants as alleged within this Complaint constitute unlawful and unfair business practices with the meaning of Bus. & Prof. Code §§17200, *et seq.*

87. Defendants have conducted the following unlawful activities:

(a) violations of Labor Code §§226, 1174, 1174.5, and the applicable IWC Wage Order, ¶10, 8 Cal. Code Regs. §11010(7)(A)(4), by failing to maintain and provide Plaintiff and the Class with accurate payroll records;

(b) violations of Labor Code §204 by failing to timely pay all earned wages to Plaintiff and the Class;

(c) violations of Labor Code §§201, 202, and 203 by failing to pay earned wages to Plaintiff and the Class upon their termination and/or within 72 hours of the last day of their employment with Defendants;

(d) violations of Labor Code §§210 and 558 for failing to timely pay Plaintiff and the Class all wages due;

(e) violations of Labor Code § 2802 for failing to reimburse Plaintiff and the Class for reasonable and necessary expenses incurred related to mandated uniforms and related apparel; and

(f) And/or any other violations of applicable law and/or unfair and/or fraudulent practices arising from the allegations stated herein.

88. Defendants' activities also constitute unfair practices in violation of Bus. & Prof. Code §§17200, *et seq.*, because Defendants' practices violate the above noted laws, and/or violate

1 an established public policy, and/or the practice is immoral, unethical, oppressive, unscrupulous,
2 and substantially injurious to Plaintiff and the Class.

3 89. The identified violations of the Labor Code, Wage Order, Regulations, laws, and
4 public policy constitute business practices because they were done repeatedly over time and in a
5 systematic manner to the detriment of Plaintiff and the Class.

6 90. Because of Defendants' violations of the Labor Code, Wage Order, Regulations,
7 laws, and public policy, Plaintiff and the Class have suffered injury-in-fact and have lost money or
8 property because of Defendants' practices. This injury-in-fact and loss of money or property
9 consists of the lost wages and other restitutionary remedies provided by the Labor Code,
10 Regulations, Wage Order, laws and public policy as detailed in this Complaint and other resulting
11 harms. Plaintiff and the Class are entitled to restitution, an injunction, declaratory, and other
12 equitable relief against such unlawful practices to prevent future damage for which there is no
13 adequate remedy at law.

14 91. As a direct and proximate result of the unfair business practices of Defendants,
15 Plaintiff and the Class are entitled to equitable and injunctive relief, including full restitution of all
16 wages which have been unlawfully lost as a result of the business acts and practices described
17 herein and enjoining Defendants to cease and desist from engaging in the practices described herein
18 for the maximum time permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

19 92. The unlawful and unfair conduct alleged herein is continuing. Plaintiff believes and
20 alleges that if Defendants are not enjoined from the conduct set forth in this Complaint, it will
21 continue to violate the noted laws.

22 93. Plaintiff and the Class are also entitled to and hereby claim attorneys' fees and costs,
23 pursuant to the private attorney general theory doctrine (Code of Civil Procedure §1021.5), and any
24 other applicable provision for attorney fees and costs, based upon the violation of the underlying
25 public policies.

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1 Plaintiff is entitled to recover their reasonable attorneys' fees and costs in an exact amount to be
2 proved at trial.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of the Class Employees prays for
5 judgment as follows:

6 A. That the Court determine that this action may be maintained as a class action with
7 the named Plaintiff appointed as Class representative;

8 B. For the attorneys appearing on the above caption to be named Class counsel;

9 C. For nominal, actual, exemplary, and compensatory damages, including lost wages,
10 according to proof at trial;

11 D. For restitution of all monies, wages, expenses, and costs due to Plaintiff and the
12 Class;

13 E. For disgorged profits from the unlawful and unfair business practices in violation of
14 Bus. & Prof. Code §17200, *et seq.*;

15 F. For reasonable attorneys' fees, costs and expenses pursuant to Labor Code §§218.5,
16 226, and Code of Civil Procedure §1021.5;

17 G. For pre-judgment and post-judgment interest to the extent allowable by law;

18 H. For all applicable penalties, whether civil or statutory, recoverable under Labor Code
19 §§203, 210, 226, 558, and as otherwise authorized by statute or law.

20 I. For an injunction restraining Defendants from continuing to engage in unlawful and
21 unfair business practices in violation of Bus. & Prof. Code §17200, *et seq.*;

22 J. For any other appropriate declaratory relief; and

23 K. For all such other and further relief that the Court may deem just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff, individually, and on behalf of the Class Employees, hereby demands a jury trial.

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HATHAWAY, PERRETT, WEBSTER,
POWERS, CHRISMAN & GUTIERREZ, APC

Date: August 10, 2018

By: _____

ALEJANDRO P. GUTIERREZ
Attorneys of Record for Plaintiff and
Putative Class

FOR COURT USE ONLY

FILED
San Francisco County Superior Court

AUG 16 2018

CLERK OF THE COURT
Shelene Johnson
Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Alejandro P. Gutierrez SBN 107688
Hathaway, Perrett, Webster, et al.
5450 Telegraph Road, Suite 200
Ventura, California 93003
TELEPHONE NO.: (805) 644-7111 FAX NO.: (805) 644-8296
ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, California 94102
BRANCH NAME: Civic Center Courthouse
CASE NAME: Brett Nichols v. The Bay Clubs Co., LLC

CASE NUMBER: **CCC-18-568966**
JUDGE:
DEPT.:

CIVIL CASE COVER SHEET
☒ **Unlimited** (Amount demanded exceeds \$25,000)
☐ **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation
☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

- 1. Check one box below for the case type that best describes this case:**
- Auto Tort**

☐ Auto (22)

☐ Uninsured motorist (46)
- Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

☐ Asbestos (04)

☐ Product liability (24)

☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)
- Non-PI/PD/WD (Other) Tort**

☐ Business tort/unfair business practice (07)

☐ Civil rights (08)

☐ Defamation (13)

☐ Fraud (16)

☐ Intellectual property (19)

☐ Professional negligence (25)

☐ Other non-PI/PD/WD tort (35)
- Employment**

☐ Wrongful termination (36)

☒ Other employment (15)
- Contract**

☐ Breach of contract/warranty (06)

☐ Rule 3.740 collections (09)

☐ Other collections (09)

☐ Insurance coverage (18)

☐ Other contract (37)
- Real Property**

☐ Eminent domain/Inverse condemnation (14)

☐ Wrongful eviction (33)

☐ Other real property (26)
- Unlawful Detainer**

☐ Commercial (31)

☐ Residential (32)

☐ Drugs (38)
- Judicial Review**

☐ Asset forfeiture (05)

☐ Petition re: arbitration award (11)

☐ Writ of mandate (02)

☐ Other judicial review (39)
- Provisionally Complex Civil Litigation**
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)

☐ Construction defect (10)

☐ Mass tort (40)

☐ Securities litigation (28)

☐ Environmental/Toxic tort (30)

☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
- Enforcement of Judgment**

☐ Enforcement of judgment (20)
- Miscellaneous Civil Complaint**

☐ RICO (27)

☐ Other complaint (not specified above) (42)
- Miscellaneous Civil Petition**

☐ Partnership and corporate governance (21)

☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. ☐ Substantial amount of documentary evidence
- d. ☐ Large number of witnesses
- e. ☐ Coordination with related actions pending in one or more other counties, states, or countries, or in a federal court
- f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): - 6 -
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 10, 2018
Alejandro P. Gutierrez
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.

File this cover sheet in addition to any cover sheet required by local court rule.

If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on other parties to the action or proceeding.

Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties In Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition