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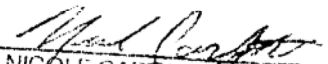
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 09 2021

BY 
NICOLE CARTWRIGHT, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE HERNANDEZ SOLIS, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

THE MERCHANT OF TENNIS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. **CIV SB 2116264**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Jose Hernandez Solis (“Plaintiff”) on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants The
3 Merchant of Tennis, Inc., a California Corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

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

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

14 **VENUE**

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

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of San Bernardino.
22 During the four years immediately preceding the filing of this Representative Action Complaint
23 and within the statute of limitations periods applicable to each cause of action pled herein,
24 Plaintiff was employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 years preceding the filing of this Representative Action Complaint and continuing to the present,
27 Defendants did (and do) business by operating retail tennis stores in the County of San
28 Bernardino, and employed Plaintiff and other, similarly-situated hourly non-exempt employees

1 within the County of San Bernardino and, therefore, were (and are) doing business in the County
2 of San Bernardino and the State of California.

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

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

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

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

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

Aggrieved Employees (as defined in Paragraph 16).

REPRESENTATIVE ACTION ALLEGATIONS

11. Plaintiff was employed by Defendants as a non-exempt production employee from approximately April 2020 to June 2020 out of its Ontario, California, facility located in San Bernardino County.

12. During Plaintiff's and other aggrieved employees' employment with Defendants, they received overtime pay for work in excess of 8 hours per workday and in excess of 40 hours of work in the workweek. However, Defendants failed to pay Plaintiff and other aggrieved employees at the correct rate of pay for all overtime hours worked resulting in Plaintiff and other aggrieved employees being underpaid on overtime wages. By way of example, Plaintiff worked overtime but was not paid at the proper overtime rate, which resulted in him being underpaid all overtime wages, as follows: for the workweek of 05/10/20 to 05/23/20 Plaintiff's regular rate of pay was \$13.25 and his overtime rate of pay was \$19.75, when it should have been \$19.875, resulting in Plaintiff being underpaid approximately \$0.06 in overtime wages; and for the workweek of 05/24/20 to 06/06/20 Plaintiff's regular rate of pay was \$13.25 and his overtime rate of pay was \$19.75, when it should have been \$19.875, resulting in Plaintiff being underpaid approximately \$0.05 in overtime wages.

13. Defendants required Plaintiff and other aggrieved employees to undergo Covid-19 temperature checks at the beginning of the workday. But Defendants failed to compensate Plaintiff and other aggrieved employees for their time spent undergoing temperature checks because the checks were performed off-the-clock. Thus, Defendants failed to pay Plaintiff and other aggrieved employees minimum and overtime wages for all hours worked. By way of example, Plaintiff underwent Covid-19 temperature checks off-the-clock but was not paid for his time spent undergoing testing, which resulted in Plaintiff's hours being underreported and underpaid in the workweeks of 05/10/20 to 05/23/20 and 05/24/20 to 06/06/20.

14. Defendants also fail to authorize and permit Plaintiff and other aggrieved employees to take all required duty-free rest periods because they do not provide second rest periods for every second 4-hour period worked or major fraction thereof, or third rest periods for

1 shifts in excess of 10.0 hours. Despite Defendants' failure to authorize and permit Plaintiff and
2 other aggrieved employees to take all rest periods to which they are legally entitled, Defendants
3 does not provide Plaintiff and other aggrieved employees with an hour of pay at their regular rate
4 for each rest period violation as required by Labor Code 226.7, and upon information and belief,
5 have no mechanism for compensating employees for rest period violations.

6 15. As a result of Defendants' failure to pay all minimum and overtime wages, and its
7 failure to pay rest period premiums, Defendants issued inaccurate wage statements to Plaintiff
8 and other aggrieved employees and failed to pay them all wages owed to them at the time of their
9 termination.

10 16. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
11 employees, as defined by Labor Code § 2699(c).

12 **FIRST CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST ALL DEFENDANTS)**

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

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

employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations :

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

19. On or about March 22, 2021, Plaintiff notified Defendant The Merchant of Tennis, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 18 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRA YER

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

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

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

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3 Dated: June 9, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:



6 Paul K. Haines
7 Attorney for Plaintiff