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ALAMEDA COUNTY

July 13, 2021

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG21105433

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA—OAKLAND

FRANCISCO DIOSDADO MIRANDA on behalf
of himself and others similarly situated,

Plaintiffs,

vs.

COURSECO, INC., a California Corporation;
BLACK POINT GOLF, LLC; a California
Limited Liability Company; THE BAY CLUBS
COMPANY, LLC, a Delaware Company; and
DOES 1-20, inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

1. Minimum Wages, LC § 1194 & Wage Orders;
2. Overtime Wages, LC § 510 & Wage Orders;
3. Meal Period Violations, Wage Orders & LC §§ 226.7, 512;
4. Rest Break Violations, Wage Orders & LC § 226.7;
5. Waiting Time Penalties, LC § 203;
6. Wage Statement Penalties, Wage Orders & LC § 226;
7. Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*
8. Civil Penalties pursuant to Private Attorneys General Act, LC 2699, *et seq.*

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Francisco Diosdado Miranda (“Plaintiff” or “Plaintiffs”) brings this action for wages, penalties and injunctive relief against The Bay Clubs Company, LLC, CourseCo, Inc., Black Point Golf, LLC, and Does 1 through 20 (collectively “Defendants”). The allegations in this complaint are based on Plaintiffs’ personal knowledge and on information and belief. The allegations made on information and belief are supported by evidence or are likely to be supported by evidence obtained through discovery.

2. Plaintiffs bring this action on behalf of a class of individuals pursuant to California Code of Civil Procedure section 382.

3. At all times relevant to this action, Defendants have engaged in systematic wage theft, maintaining policies and practices that violate the rights of Plaintiffs and the Class. Defendants have failed to compensate workers for all hours worked, in violation of the state’s minimum wage and overtime laws; failed to provide timely, complete and off-duty meal periods, or otherwise pay premium wages in lieu thereof; failed to authorize and permit rest periods in compliance with the Wage Orders and at the requisite rates for the length of shifts, or otherwise pay premium wages in lieu thereof; failed to pay all wages owed upon termination of the employment relationship; failed to furnish timely each pay period accurate, itemized statements separately stating, among other things, total hours worked, gross and net wages earned, all applicable hourly rates, and all premium wages earned; and failed to comply with record keeping requirements.

4. Defendants’ acts and omissions, which violate the Labor Code, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiffs and the Class they seek to represent are therefore entitled to all remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other equitable relief for a period of four years from the filing of the original complaint through the date of this action’s final disposition. Plaintiffs also seek reasonable attorneys’ fees and costs pursuant to, *inter alia*, Labor Code sections 226(e) & (h), 1194(a), 1198.5(l), and Code of Civil Procedure section 1021.5.

5. Plaintiff Francisco Diosdado Miranda has complied with the administrative requirements of Labor Code section 2699.3 which are a pre-requisite for asserting a Private Attorneys General Act (“PAGA”) claim. Mr. Diosdado Miranda gave written notice to the employer and the Labor & Workforce Development Agency (“LWDA”) of the facts and theories supporting the alleged violations described in this complaint. More than 65 days have passed since notice was given and now Mr. Diosdado Miranda is entitled to act as a proxy of the state to enforce the labor laws and collect penalties on behalf of the State of California and the workforce, pursuant to Labor Code section 2699, *et seq.* Plaintiff Diosdado Miranda therefore seeks civil penalties pursuant to PAGA for himself, the workforce and the state, as well as attorney’s fees and cost of suit.

6. At all times relevant to this action, Defendants' conduct has been willful and in reckless disregard of the rights of their workers. Defendants have been on notice of the alleged illegalities but have deliberately continued to exploit workers by enforcing and maintaining the illegal practices described herein. This action is brought not only to recover rightfully earned wages but also to enforce the state's laws, restore ill-gotten gains, and deter Defendants from their illegal conduct. Plaintiffs therefore seeks all remedies available to themselves and to the Class.

II. THE PARTIES

7. Plaintiff Francisco Diosdado Miranda was employed by Defendants as a non-exempt, hourly employee beginning in or around 2015 until approximately July of 2016, and then returned to work for Defendants in or around October 2018. Mr. Diosdado Miranda last worked at the club on or about May 24, 2020, and then he was laid off by Defendants on or about November 20, 2020. At the time his employment ended he was classified as a greenskeeper and was paid \$20 per hour. Defendants failed to pay Plaintiff Diosdado Miranda for all hours worked, including for time at the start and end of the shift, for time that was recorded, and time that was rounded or shaved. Plaintiff alleges that the failure to pay for all hours worked violates provisions of the California Wage Order and Labor Code, including minimum wage and overtime provisions of California law. Defendants also violated Plaintiff Diosdado Miranda's right to lawful rest breaks and meal periods by failing to provide rest and meal periods and or premium wages in lieu thereof. Defendants failed to provide timely, complete, uninterrupted, off-duty meal periods that were free of the employer's control, and Plaintiff

1 Diosdado Miranda was denied premium wages in lieu of lawful meal periods. Defendants unlawfully
2 rounded meal period time and automatically deducted 30 minutes for meal periods that were less than
3 30 minutes, resulting in minimum wage and meal period violations as a result of this practice.
4 Defendants did not obtain valid and voluntary meal period waivers or on-duty meal period agreements,
5 and instead of providing lawful meal periods Defendants automatically deducted 30 minutes (or more)
6 for meal periods whether they were provided at all or in part. Defendants also failed to authorize and
7 permit paid off-duty rest breaks of at least 10 minutes at the rate of one rest period for shifts greater
8 than 3.5 hours, two rest periods for shifts greater than six hours and up to 10 hours, and three shifts for
9 shifts greater than 10 hours and up to 14 hours, and so on. Plaintiff Diosdado Miranda was denied
10 premium wages in lieu of proper rest breaks. Further, Plaintiff Diosdado Miranda was provided
11 inaccurate itemized wage statements that failed to state accurately the gross and net wages owed,
12 applicable rates of pay, total hours, deductions and other statutory items. When Plaintiff Diosdado
13 Miranda's employment ended, Defendants failed to pay all wages owed timely, entitling him to
14 waiting tie penalties under Labor Code section 203. Plaintiff Diosdado Miranda is an aggrieved
15 employee within the meaning of Labor Code section 2699 who has suffered injury in fact and lost
16 money or property.

17 8. On information and belief, The Bay Clubs Company, LLC ("Bay Club") is a Limited
18 Liability Company that is in the business of operating and managing health clubs in California. The
19 Bay Club's principal California office is located in Pleasanton, California, and its health clubs are
20 located throughout the state. The company has employed Plaintiffs and members of the Class and
21 PAGA Pool in California and is liable for the violations alleged herein as the employer. The Bay Club
22 is liable as an employer and as a successor in interest for violations of the Labor Code and Wage
23 Orders committed by Defendant Black Point Golf, LLC with respect to Plaintiffs and the Class.

24 9. On information and belief, CourseCo, Inc. ("CourseCo") is a California Corporation
25 that has, at all times relevant, been in the business of managing golf courses in California and other
26 Western states. Plaintiffs are informed and believe that CourseCo, Inc. was a manager and/or member
27 of Black Point Golf, LLC, which employed Plaintiffs and members of the Class until Black Point Golf,
28 LLC was terminated and canceled in or around the Fall or Winter of 2019. CourseCo is sued as an

1 employer pursuant to Labor Code section 558.1 for violating or causing violations of the Labor Code
2 and Wage Orders as alleged herein.

3 10. On information and belief, Black Point Golf, LLC ("Black Point") was a California
4 limited liability company from approximately 2013 until the Fall or Winter of 2019 when the entity
5 was terminated and cancelled. Plaintiffs are informed and believe and thereon allege that Black Point
6 was in the business of managing golf courses and operated under the fictitious business name
7 StoneTree Golf Club ("StoneTree"), where it employed Plaintiffs and members of the Class. Black
8 Point employed Plaintiffs and Class members at StoneTree until the Bay Club began to manage
9 StoneTree and began to employ Plaintiffs and members of the Class. Plaintiffs are informed and
10 believe and thereon allege that in or around August or September of 2019, Bay Club began to operate
11 StoneTree using the same "StoneTree Golf Club" name. Plaintiffs are further informed and believe that
12 operations continued with substantially the same members and customers and with substantially the
13 same workforce and managers.

14 11. At all times relevant to this action, the offending conduct has been willful and in
15 reckless disregard of the rights of workers. Defendants knew or were on notice of the alleged
16 illegalities but deliberately chose to ignore them. The true names and capacities, whether individual,
17 corporate, associates, or otherwise of Defendants sued as Does 1-20, inclusive, are currently unknown
18 to Plaintiff, who therefore sue such Defendants by fictitious names as permitted by law. Plaintiff are
19 informed and believe that each Doe defendant is legally responsible in some manner for the unlawful
20 acts referred to herein as a joint venturer, alter ego, predecessor, successor, sister, parent, subsidiary, or
21 related or affiliated entity. Plaintiff will seek leave of court to amend this complaint to reflect the true
22 names and capacities of the Defendants designated as Does when such identities become known.

23 **III. JURISDICTION & VENUE**

24 12. This Court has jurisdiction over Plaintiff's claims under the California Labor Code and
25 the Unfair Competition Law, California Business & Professions Code sections 17200, *et seq.*

26 13. Venue is proper in the Superior Court of the County of Alameda pursuant to California
27 Code of Civil Procedure sections 395 and 395.5, because (a) Defendants or some of the Defendants
28 reside in Alameda County, (b) the Bay Club has its principal place of business in Alameda County, (c)

1 the company operates clubs in Alameda County, (d) Alameda County is a county where the obligation
2 or liability arises, and (e) non-exempt workers have been harmed by Defendants' conduct in Alameda
3 County.

4 **IV. FACTUAL ALLEGATIONS**

5 14. At all times relevant to this action, Defendants maintained unlawful employment, labor
6 and compensation policies and practices that affected Plaintiffs and, on information and belief, other
7 workers who are members of the putative Class.

8 15. Defendants failed to pay Plaintiffs and, on information and belief, the Class for all hours
9 worked in violation of the state's legal minimum and overtime wage provisions contained in the Labor
10 Code, Wage Orders, and local ordinances.

11 16. Defendants failed to pay workers according to the true start and end of work periods
12 and meal periods, electing instead to pay less than all hours worked and less than all time recorded.
13 Plaintiff and, on information and belief, members of the Class were denied compensation for all hours
14 worked, including time that was recorded but unpaid and compensable time that was not recorded and
15 was unpaid.

16 17. As a result of Defendants' timekeeping and payroll policies, Plaintiffs and, on
17 information and belief, the Class were denied compensation for all hours worked and suffered
18 violations of the minimum wage and overtime laws.

19 18. Plaintiffs and, on information and belief, the Class were denied off-duty, timely and
20 complete meal periods of at least thirty (30) minutes, and were denied second meal periods for shifts
21 exceeding ten (10) hours. Plaintiffs are informed and believe that they and members of the Class were
22 denied meal premiums for denied and non-compliant meal periods.

23 19. Plaintiffs and, on information and belief, the Class were denied off duty rest breaks of at
24 least net ten (10) minutes of rest time at the rate of one rest period for shifts greater than three and one-
25 half (3½) hours, two rest periods for shifts greater than six (6) hours and up to ten (10) hours, and three
26 rest breaks for shifts greater than ten (10) hours and up to fourteen (14), and so on. Plaintiffs are
27 informed and believe that they and members of the Class were denied rest premiums for denied and
28 non-compliant rest periods.

20. Plaintiffs and, on information and belief, the Class were not provided accurate, itemized wage statements within the meaning of the Wage Orders and Labor Code section 226, in that they failed to state the correct number of total hours worked, gross and net wages earned, and all applicable hourly rates of pay and corresponding hours at each rate.

21. Plaintiffs and, on information and belief, the Class were entitled to receive all wages owed to them periodically each pay period. Nevertheless, Plaintiffs and, on information and belief, the Class did not receive payment of all wages, including minimum, overtime, and premium rest and meal period wages each pay period, in violation of Labor Code sections 204, 204b, and 210.

22. Plaintiffs are informed and believe that members of the Class whose employment with Defendants has ended were not paid all wages owed timely upon separation from employment, including minimum, overtime, and premium rest and meal period wages owed to them, in violation of Labor Code sections 201 and 202. Plaintiffs and Class Members not paid timely upon separation from employment, including through layoff, termination of seasonal work, resignation, and discharge, are entitled to waiting time penalties pursuant to Labor Code section 203.

V. CLASS ALLEGATIONS

23. Plaintiffs brings this action as a class action under Code of Civil Procedure section 382 on behalf of the following class:

All non-exempt employees who work or have worked for Defendants within the State of California during the period four (4) years prior to the filing of the initial complaint in this action through the date of this action's final disposition, plus any applicable tolling, including tolling under California Emergency Rule 9.

24. **Reservations of Rights:** Pursuant to California Rules of Court, rule 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues.

25. **Numerosity:** The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis alleges, that during the relevant time period, Defendants have employed thousands of workers in California who are potential Class Members. These workers have been employed in various regions of the state, both in Northern

1 California and in Southern California, and potential Class Members are believed to be geographically
2 dispersed throughout the state. The Class Members are so numerous that joinder of all of them is
3 impracticable. The individuals and the identity of such membership is readily ascertainable by
4 inspection of Defendants' records.

5 26. **Typicality:** Plaintiffs' claims are typical of all other Class Members as demonstrated
6 herein. Plaintiffs will fairly and adequately protect the interests of the other Class Members with
7 whom Plaintiffs have a well-defined community of interest.

8 27. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class
9 member, with whom they have a well-defined community of interest and typicality of claims, as
10 demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members.
11 Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action
12 discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this
13 action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily
14 expended for the prosecution of this action for the substantial benefit of each class member. Plaintiffs
15 have retained competent counsel experienced in wage and hour class action litigation.

16 28. **Predominant Common Questions:** Common questions of law and fact exist as to all
17 members of the Proposed Class and predominate over any questions solely affecting individual
18 members of the Proposed Class.

19 29. Common questions of fact and law predominate, including the following:

- 20 a. Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class to
21 work without compensation at the start and end of shifts, or during unpaid meal periods, and
22 failed to compensate them at the statutory and/or agreed-upon wage rates, in violation of the
23 Labor Code and the Wage Orders;
- 24 b. Whether Defendants failed to compensate Plaintiffs and members of the Class for all
25 "hours worked," within the meaning of the applicable Wage Orders;
- 26 c. Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class to
27 work in excess of eight (8) hours per day and/or over forty (40) hours per week and/or the first
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1 eight (8) hours on the seventh (7th) consecutive workday in a workweek, and failed to pay the
2 legally required overtime compensation, in violation of the Labor Code and the Wage Orders;

3 d. Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class to
4 work in excess of twelve (12) hours per day and/or in excess of eight (8) hours on the seventh
5 (7th) consecutive workday in a workweek, and failed to pay the legally required double-time
6 compensation, in violation of the Labor Code and the Wage Orders;

7 e. Whether the burden of proof will shift to Defendants for failing to maintain accurate
8 records of the start and end of work periods, meal periods, total daily hours worked and wages
9 earned, in violation of the Wage Orders, Labor Code sections 226 and 1174, and California
10 law;

11 f. Whether Defendants failed to relieve Plaintiffs and the Class of all duty for a first net
12 thirty (30) minute meal period before the end of the fifth (5th) hour of work, in violation of the
13 Labor Code, the Wage Orders, and California law;

14 g. Whether Defendants failed to relieve Plaintiffs and the Class of all duty for a second net
15 thirty (30) minute meal period for shifts in excess of 10 hours, in violation of the Labor Code,
16 the Wage Orders, and California law;

17 h. Whether Defendants failed to authorize and permit Plaintiffs and the Class to take net
18 ten (10) minute rest breaks for each four (4) hour work period, or major portion thereof, in
19 violation of the Labor Code, the Wage Orders, and California law;

20 i. Whether Defendants failed to make good faith efforts to provide Plaintiffs and the Class
21 with rest breaks during the middle of each four (4) hour work period, in violation of the Labor
22 Code, the Wage Orders, and California law;

23 j. Whether Defendants failed to pay Plaintiffs and the Class premium wages for all
24 unlawfully provided meal periods and rest breaks, in violation of the Labor Code, the Wage
25 Orders, and California law;

26 k. Whether Defendants knowingly and intentionally failed to provide Plaintiffs and the
27 Class written wage statements that accurately reflect all gross and net wages earned, total hours
28 worked, applicable hourly rates and corresponding hours at each rate, in violation of the Labor
Code, the Wage Orders, and California law;

1 l. Whether Defendants' conduct as described herein was willful or reckless;

2 m. Whether Defendants are liable for failing to pay all wages owed periodically under
3 Labor Code sections 204 and 204b.

4 n. Whether Plaintiffs and members of the class whose employment terminated are entitled
5 to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages
6 owed timely upon the separation from employment;

7 o. Whether Defendants engaged in unlawful and/or unfair business practices in violation
8 of Business & Professions Code sections 17200 *et seq.* ("UCL"); and

9 p. Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for
10 restitution of unpaid or underpaid statutory and/or agreed upon regular, minimum, overtime,
11 double-time, and premium rest and meal period wages.

12 30. **Superiority:** A class action is superior to other available methods for the fair and
13 efficient adjudication of the controversy, particularly in the context of wage and hour litigation where
14 an individual Plaintiff lacks the financial resources to vigorously prosecute separate lawsuits against
15 corporate defendants. A class action is superior to other available means for fair and efficient
16 adjudication of class members' claims and offers significant benefits to the parties and the court. A
17 class action will allow a number of similarly situated persons to simultaneously and efficiently
18 prosecute their common claims in a single forum without the unnecessary duplication of effort and
19 expense that numerous individual actions would entail. The individual monetary amounts due to many
20 class members may not be large enough on their own for individual class members to obtain legal
21 representation and relief. Moreover, a class action will serve important public interests by enabling the
22 non-waivable statutory rights of class members to be effectively asserted, and fundamental public
23 policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating
24 the rights of workers who are less likely to come forward to assert their rights based on fears of
25 reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments
26 inherent in individual litigation and address the problems inherent in random and fragmentary
27 enforcement.
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31. Plaintiffs intend to send notice to all members of the Class to the extent required by Labor Code section 382. The names and addresses of the Class are available from Defendants.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay Legal Minimum Wage

(Violation of the Wage Orders and Labor Code sections 204, 210, 1194, 1194.2 and 1197 and Local Ordinances)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

32. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

33. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring compensation at no less than the legal minimum wage. Defendants violated the Wage Orders and Labor Code sections 200, *et seq.*, 1194 and 1197 by failing to compensate Plaintiffs and, on information and belief, the Class for all hours worked at the legal minimum rates established in California and various municipalities where employees worked.

34. At all times relevant to this action, Plaintiffs and the Class were entitled to compensation at rates that were not less than the legal minimum wage, pursuant to the Local Ordinance, Wage Orders and Labor Code sections 1182.12, 1194 and 1197. Defendants violated these provisions by failing to compensate for all hours worked.

35. Defendants' conduct violates provisions of Local Ordinances, the Wage Orders and Labor Code. Defendants have violated Labor Code section 223 by secretly paying Plaintiffs and, on information and belief, the Class less than the rates designated by statute or contract while purporting to pay the designated rates and have also violated Labor Code sections 204 and 204b by failing to pay all wages owed weekly or semi-monthly, entitling Plaintiffs and the Class to penalties and damages pursuant to Labor Code section 210.

36. Pursuant to Labor Code section 1194.2, because Plaintiffs seek to recover wages in this action on behalf of herself and the Class resulting from Defendants' payment of a wage less than the minimum wage fixed by an order of the commission or by statute, they are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

37. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of themselves and the Class.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Violation of Wage Orders and Labor Code sections 510, 1194, 1198)
Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

38. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

39. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code sections 510, 1194, 1198. California law requires overtime compensation at the rate of one and one-half (1.5) times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a workweek. Similarly, these overtime provisions require overtime pay at the rate of twice the regular rate of pay for hours in excess of 12 in a workday and eight (8) on any seventh day of a workweek (i.e., double-time pay).

40. At all times relevant to this action, Plaintiffs and, on information and belief, the Class have worked in excess of eight (8) hours in a workday and 40 hours in a workweek without compensation for all hours worked at the required overtime rates.

41. Defendants violated these provisions by failing to compensate for all hours worked in excess of the overtime and double-time thresholds at the required premium wage rates. As a result, Defendants' conduct violates provisions of Local Ordinances, the Wage Orders and Labor Code.

42. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of themselves and the Class.

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof

(Violation of Wage Orders, and Labor Code sections 226.7 and 512)
Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

43. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

44. California Labor Code section 512 and the Wage Orders prohibit employers from employing workers for a work period of more than five hours per day without providing the employee with a meal period of at least thirty (30) minutes, or for a work period of more than ten (10) hours

1 without a second meal period of at least thirty (30) minutes. California law requires the meal periods
2 to be off duty, without interruption, and the first meal period of the day must occur within five (5)
3 hours from the start of the shift.

4 45. California Labor Code section 226.7 prohibits any employer from requiring any
5 employee to work during any meal period mandated by the applicable Wage Orders, and states that an
6 employer that fails to provide an employee with a required meal period in compliance with Section 512
7 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate
8 of compensation (*i.e.*, a meal period premium) for each work day that the employer does not provide a
9 compliant meal period.

10 46. The applicable Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor
11 Code governing meal periods. For example, Wage Order 1(11), provides as follows:

12 (A) No employer shall employ any person for a work period of more than five
13 (5) hours without a meal period of not less than 30 minutes, except that when a
14 work period of not more than six (6) hours will complete the day's work the
15 meal period may be waived by mutual consent of the employer and employee.
16 In the case of employees covered by a valid collective bargaining agreement,
the parties to the collective bargaining agreement may agree to a meal period
that commences after no more than six (6) hours of work.

17 (B) An employer may not employ an employee for a work period of more than
18 ten (10) hours per day without providing the employee with a second meal
19 period of not less than 30 minutes, except that if the total hours worked is no
more than 12 hours, the second meal period may be waived by mutual consent
of the employer and the employee only if the first meal period was not waived.

20 (C) Unless the employee is relieved of all duty during a 30 minute meal period,
21 the meal period shall be considered an "on duty" meal period and counted as
22 time worked. An "on duty" meal period shall be permitted only when the nature
23 of the work prevents an employee from being relieved of all duty and when by
24 written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.

25 (D) If an employer fails to provide an employee a meal period in accordance
26 with the applicable provisions of this order, the employer shall pay the
27 employee one (1) hour of pay at the employee's regular rate of compensation
for each workday that the meal period is not provided.

28 (E) In all places of employment where employees are required to eat on the

premises, a suitable place for that purpose shall be designated.

47. At all times relevant to this action, Defendants violated the provisions of the Labor Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing to Plaintiff and, on information and belief, the Class with a timely thirty (30) minute meal period within the first five (5) hours of work that was completely off duty, or a second thirty (30) minute meal period when workers worked more than ten (10) hours per day.

48. Plaintiffs and, on information and belief, the Class did not waive meal periods, and Plaintiffs are informed and believe and thereon allege that valid meal period waivers were not in place or were not voluntarily consented to.

49. Defendants are therefore liable for meal period premium wages, pursuant to Labor Code section 226.7.

50. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof

(Violation of Wage Orders and Labor Code sections 226.7)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

51. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

52. California Labor Code section 226.7 prohibits any employer from requiring an employee to work during any rest period mandated by the applicable Wage Orders. For example, Wage Order 1(12) provides as follows:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

53. At all times relevant to this action, Defendants failed to authorize and permit rest periods to Plaintiffs and, on information and belief, the Class with of at least 10 minutes of time completely off duty at a rate of one rest period for shifts greater than three and one-half (3½) hours up to six (6) hours, two rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours up to fourteen (14) hours, and so on.

54. Defendants are therefore liable for rest break premium wages, pursuant to Labor Code section 226.7.

55. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FIFTH CAUSE OF ACTION

Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation (Violation of Labor Code sections 201 and 202)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

56. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

57. California Labor Code sections 201 and 202 require immediate payment of all unpaid wages at the time an employee is discharged or resigns from employment.

58. Defendants have willfully failed to pay all wages owed to Plaintiffs and, on information and belief, members of the Class timely upon the termination of their employment relationship with Defendants, including wages for all hours worked, overtime wages, meal and rest period premium wages. For Defendants' willful failure to pay all wages timely, Plaintiffs' and the Class' wages continue from the due date for up to 30 days at this daily rate, pursuant to Labor Code section 203.

59. Wherefore, Plaintiffs seeks waiting time penalties and costs in amounts to be proven at trial on behalf of themselves and the Class.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements (Violation of Labor Code section 226 and the Wage Orders)

Plaintiffs, on Behalf of Themselves and the Class, Against Defendant Bay Club

60. Plaintiffs re-allege and incorporates the above allegations above as if fully stated herein.

61. California Labor Code section 226(a) provides, in relevant part, that every employer

1 must furnish each employee with an itemized wage statement that accurately shows the following:

2 (1) gross wages earned, (2) total hours worked by the employee, except as
3 provided in subdivision (j), (3) the number of piece-rate units earned and any
4 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of his or her social security number or an
9 employee identification number other than a social security number, (8) the
10 name and address of the legal entity that is the employer and, if the employer is
11 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
12 and address of the legal entity that secured the services of the employer, and (9)
13 all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee....

15 62. At all times relevant to this action, Defendants have failed to provide accurate itemized
16 wage statements, in violation of Labor Code section 226. Plaintiffs and, on information and belief,
17 other members of the class were given wage statements that failed to list the gross and net wages
18 earned, total hours worked, all applicable rates of pay and corresponding number of hours at each rate
19 of pay, inclusive dates of the pay period, the number of piece-rate units earned and any applicable
20 piece rate, all deductions.

21 63. Defendants' failure to comply with the requirements of Labor Code section 226 and
22 provide accurate wage statements was knowing and intentional within the meaning of that provision.
23 Plaintiffs and members of the putative Class are deemed to have suffered injury pursuant to Labor
24 Code section 226(e).

25 64. Pursuant to Labor Code section 226(e), Plaintiffs and Class Members are entitled to
26 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
27 violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to
28 exceed an aggregate penalty of four thousand dollars (\$4,000).

65. Wherefore, Plaintiffs seek damages, penalties, injunctive relief, attorney's fees and cost
of suit in amounts to be proven at trial on behalf of themselves and the Class.

SEVENTH CAUSE OF ACTION
California Unfair Competition Law

(Violation of Business & Professions Code sections 17200, *et seq.*)
Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

66. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

67. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

68. California Business and Professions Code § 17203 allows a person who has lost money or property as a result of unfair competition to bring an action to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

69. Defendants unlawful and unfair business practices resulted in the following violations of California Labor Code and Wage Order provisions:

- a. Failing to maintain accurate time records of the start and end of work periods and meal periods;
- b. Failure to compensate for all hours worked within the meaning of the Wage Orders;
- c. Failure to comply with the legal minimum wage set forth under California law and various local ordinances, in violation of the Wage Orders, Labor Code and local ordinances;
- d. Failure to comply with the overtime laws set forth in the Wage Orders, Labor Code and local ordinances;
- e. Failure to pay rest period premiums for non-compliance with the rest period requirements of the Labor Code and Wage Orders;
- f. Failure to pay meal period premiums for non-compliance with the meal period provisions of the Labor Code and Wage Orders;
- g. Failure to pay all wages owed timely upon termination of the employment relationship, as required by Labor Code section 201 and 202;
- h. Failure to maintain accurate payroll records in violation of Labor Code section 1174.

70. On information and belief, at all times relevant to this action, Plaintiffs and the Class have lost, and Defendants have either acquired, or may have acquired, money or property in the form

1 of earned unpaid wages for all hours worked, unpaid overtime and double-time wages, unpaid meal
2 period and rest break premium wages, and reimbursement of expenses from Plaintiffs and the Class by
3 means of unfair competition as a result of Defendants' unlawful failure to pay those wages, and related
4 failures to maintain accurate records, in violation of the requirements of the Labor Code and the Wage
5 Orders.

6 71. Pursuant to Business and Professions Code section 17203, Plaintiffs seek restitution of
7 all these moneys and property, that Defendants either acquired, and/or may have acquired, from
8 Plaintiffs and the Class by means of unfair competition in amounts subject to proof at trial. Plaintiffs
9 also seeks to prevent Defendants from continuing to engage in the unlawful and/or unfair business
10 practices alleged herein.

11 72. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
12 interests of the general public in that other employers who exercise honest compliance with applicable
13 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
14 disadvantage as a result of Defendants' conduct.

15 73. Wherefore, Plaintiffs seek restitution of wages and the economic value of benefits
16 unlawfully denied to Plaintiffs and the Class by Defendants in amounts subject to proof.

17 **SEVENTH CAUSE OF ACTION**

18 California Private Attorneys General Act

19 (Civil Penalties Pursuant to Labor Code section 2699, et seq.)

20 Plaintiff Diosdado Miranda for Himself, the PAGA Pool, and the State, Against Defendant Bay Club

21 80. Plaintiffs re-alleges and incorporates the above allegations above as if fully stated
22 herein.

23 81. Plaintiff Diosdado Miranda is an aggrieved employee as defined in California Labor
24 Code section 2699(a). Plaintiff Diosdado Miranda brings this cause of action on behalf the State of
25 California with respect to the labor law violations they and other current or former non-exempt
26 employees experienced during the relevant time-period, as alleged in this complaint.

27 82. As described in this complaint, Defendants violated the California Labor Code by
28 failing to compensate workers for all hours worked, failing to pay overtime premiums, failing to
provide meal periods or pay premium wages in lieu thereof, failing to provide rest breaks or pay

1 premium wages in lieu thereof, failing to provide accurate itemized wage statements, failing to pay
2 wages timely each pay period, failure to pay final wages at resignation, termination, layoff, or seasonal
3 separation, and failing to maintain accurate payroll record. As a consequence, Defendants have
4 violated the rights of Plaintiffs and, on information and belief, the rights of other current or former
5 employees who worked for Defendants as non-exempt employees.

6 83. PAGA permits an individual to recover civil penalties on behalf of herself and other
7 current or former employees for violations of the Labor Code. Cal. Labor Code section 2699(a).

8 84. Plaintiff Francisco Diosdado Miranda has complied with the administrative
9 requirements of PAGA set forth in Labor Code section 2699.3. Plaintiff gave written notice to the
10 employer and the LWDA of the facts and theories supporting the alleged violations of the Labor Code
11 and Wage Orders. This notice was mailed by certified mail with return receipt requested. More than 65
12 days have passed since notice was sent and Plaintiff Diosdado Miranda is now entitled to bring this
13 claim as a matter of right.

14 85. Defendants are liable for PAGA penalties for the Wage Order and Labor Code
15 violations described in this complaint. Plaintiffs alleges that Defendants violated: sections 201-202,
16 256 and 1197.1 subjecting Defendants to liability for waiting time penalties based on willful (section
17 203) failure to pay all wages owed timely upon separation from employment; sections 200, 204, 204b,
18 and 210 by failing to pay all wages owed weekly, semi-monthly or when due; sections 221, 223, 225.5
19 for secretly paying less than the statutory or agreed upon rates; sections 226 and 226.3 for providing
20 inaccurate wage statements; sections 510, 511, 558 and 1198 for failing to pay overtime premiums;
21 sections 226.7, 512 and the Wage Orders for failing to comply with the rest and meal period provisions
22 of California law or pay additional wages in lieu thereof; sections 1194, 1194.2 and 1197.1 for failing
23 to pay for all hours worked in violation of the minimum wage; sections 1174 and 1174.5 for failing to
24 maintain required payroll records. In addition, Defendants violated provisions of the California
25 Industrial Welfare Commission Wage Orders, including provisions governing payment for all hours
26 worked, payment of overtime premiums for work in excess of 8 hours in a workday and 12 hours in a
27 workweek, provision of rest and meal breaks or additional wages in lieu thereof, and accurate record-
28 keeping.

1 86. With respect to record-keeping, California Labor Code section 1174(d) requires
2 employers to keep “payroll records showing the hours worked daily by and the wages paid to” all
3 employees. Section 1174 requires employers to keep such records for at least three years. Labor Code
4 section 1776 similarly requires employers that are contractors or subcontractors to maintain payroll
5 records.

6 87. In addition, the applicable Wage Order(s) require employers to keep accurate time
7 records showing when each employee begins and ends each work period and meal period, as well as
8 total hours worked in the payroll period and applicable rates of pay.

9 88. Defendants have failed to maintain accurate records required by the Wage Order(s) and
10 Labor Code, subjecting it to civil penalties under PAGA, including pursuant to Labor Code sections
11 1174.5.

12 89. Defendants are liable for civil penalties for their failure to compensate for all hours
13 worked, pursuant to Labor Code sections 200, 204, 204b, 210, 223, 510, 511, 558, 1194, 1194.2, 1197,
14 1197.1, 1198, and 2698 et seq.

15 90. Defendants are liable for civil penalties for failing to pay overtime pursuant to Labor
16 Code sections 510, 558, and 2698 et seq.

17 91. Defendants are liable for failing to provide accurate wage statements, giving rise to
18 liability for Civil Penalties pursuant to Labor Code sections 226, 226.3, and 2698 et seq.

19 92. Defendants are liable for civil penalties pursuant to California Labor Code sections 203,
20 256, 1197.1 and 2698 et seq. for failing to pay all wages owed timely upon separation from
21 employment, in violation of Labor Code sections 201 and 202.

22 93. PAGA permits an individual to recover civil penalties on behalf of herself, the state and
23 other current or former employees for violations of the Labor Code. Cal. Labor Code section 2699(a).

24 94. Pursuant to Labor Code sections 558 and 1197.1, Defendants Kevin Klipfel and
25 Matthew J. Stevens are liable for Civil Penalties for violating or causing violations of the overtime
26 laws (Labor Code section 510) and Wage Orders), the minimum wage laws (Labor Code section 1194
27 and Wage Orders), rest and meal period laws (Labor Code sections 226.7, 512, and Wage Orders), and
28

1 the requirement to pay all wages owed timely upon separation of employment (Labor Code sections
2 201-203).

3 95. Wherefore, Plaintiff Diosdado Miranda seeks PAGA penalties for himself, the workforce and
4 the state, plus attorney's fees, costs and interest.

5 **VII. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for relief as follows:

7 1. For an order awarding compensatory damages for all wages earned but not paid, and all
8 overtime wages earned and not paid, in the amount to be proven at trial, pursuant to Labor Code
9 sections 200, *et seq.*, 510, 511, 1194, 1197, 1198;

10 2. For an order awarding pre-judgment interest of 10 percent on the unpaid wages and
11 overtime compensation owed under Labor Code section 218.6;

12 3. For an order awarding unpaid overtime, minimum wage and a minimum wage
13 liquidated damages under Labor Code sections 1194 and 1194.2;

14 4. For an order awarding attorney's fees pursuant to Labor Code section 1194;

15 5. For an order awarding meal period premium wages pursuant to Labor Code section
16 226.7;

17 6. For an order awarding rest break premium wages pursuant to Labor Code section 226.7;

18 7. For an order awarding "waiting time" penalties under California Labor Code section
19 203;

20 8. For an order awarding penalties, injunctive relief, attorney's fees and costs pursuant to
21 Labor Code section 226;

22 9. For an order awarding penalties, injunctive relief and attorney's fees pursuant to Labor
23 Code section 1198.5;

24 10. For an order awarding earned but unpaid wages as equitable relief to Plaintiffs and the
25 Class under the UCL for a period that extends the statute of limitations or recovery period for wages to
26 four years;

27 11. For a declaratory judgment that the actions, conduct, and practices of Defendants
28 complained of herein constitute unfair business practices under the UCL;

12. For an injunction and order permanently restraining and enjoining Defendants from engaging in and continuing the unlawful policies and practices complained of herein;

13. For an order certifying a class pursuant to Code of Civil Procedure section 382;

14. For an order appointing Plaintiffs as class representatives;

15. For an order appointing counsel for Plaintiffs as class counsel;

16. For an order awarding reasonable attorney's fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the Labor Code;

17. For an order awarding interest to the extent permitted by law;

18. For an order awarding costs and expenses of this action;

19. For an award of civil penalties payable to Plaintiff and other current or former employees (PAGA Pool) under PAGA for each violation of the Labor Code and Wage Order described in this complaint, including but not limited to penalties under Labor Code sections 210, 226.3, 225.5, 256, 558, 1174.5, 1197.1, 2699(a), 2699(f), and other provisions described in this complaint; and

20. For such other and further relief as the Court deems just and proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on claims so triable.

Dated: July 12, 2021

ADVOCATES FOR WORKER RIGHTS LLP



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