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Attorneys for Plaintiff and Aggrieved Employees all aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ENMANUEL DE JESUS LOPEZ TORRES,
an individual, on behalf of the State of
California, as a private attorney general,

PLAINTIFF,

v.

MOUNTAIN VIEW COUNTRY CLUB,
INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. CVRI2105882

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Penalties Pursuant to Labor Code §2699, et seq. for violations of Labor Code §§ 201-203, 204, 210, 226(a), 226.7, 512, and 2802

1 Plaintiff ENMANUEL DE JESUS LOPEZ TORRES, on behalf of himself, and on behalf
2 of the people of the State of California and as an “aggrieved employee” under Labor Code Private
3 Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”), complains of Defendant
4 MOUNTAIN VIEW COUNTRY CLUB, INC. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Representative Action, pursuant to Labor Code §2699, *et seq.*, on behalf
8 of Aggrieved Employees the following group of individuals:

9 Aggrieved EmployeesAll persons who are employed or have been
10 employed as an hourly employee by MOUNTAIN VIEW
11 COUNTRY CLUB, INC., in the State of California who worked one
12 or more pay periods since one (1) year prior to the date of Plaintiff’s
13 notice letter to the Labor & Workforce Development Agency
14 (“LWDA”) and continuing to the present plus any additional time
during which the statutes of limitation for the causes of action herein
were tolled pursuant to Emergency Rule 9 of the California Rules of
Court, the ‘Emergency Rules Related to COVID-19’. (“Aggrieved
Employees”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. For at least one (1) year prior to the date of the letter sent to the LWDA and
24 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
25 has failed to properly comply with Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512,
26 and 2802.

27 4. Defendant failed to apprise Plaintiff and the Aggrieved Employees of their rights
28 associated with meal periods and failed to provide compliant meal periods. Further, Defendant

1 failed to pay such employees one (1) hour of pay at the employees' regular rate of compensation
2 for each workday that the first meal period was not provided within the first (5) hours of the shift.
3 Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme
4 Court set forth the formula for calculating the one extra hour of premium pay that employees are
5 owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court
6 held that those premium payments must include the hourly value of any nondiscretionary earnings
7 (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.
8 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the
9 blended rate in violation of Labor Code §§ 226.7 and 512.

10 5. Defendant failed to apprise Plaintiff and the Aggrieved Employees of their rights
11 associated with rest periods and failed to provide compliant rest periods. Defendant maintained a
12 consistent policy of failing to provide Plaintiff and the Aggrieved Employees with rest breaks of
13 not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Plaintiff
14 and the Aggrieved Employees are required to work four hour increments (or major fractions
15 thereof) without being provided with a ten (10) minute rest period. Further, Plaintiff and the
16 Aggrieved Employees were not compensated with one (1) hour of wages at the regular rate of
17 compensation for each missed rest period in violation of *Ferra* and as required by Labor Code §
18 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly
19 value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at
20 an employee's base hourly rate.

21 6. Plaintiff and the Aggrieved Employees were required to incur substantial expenses
22 in direct consequent of the discharge of their duties for Defendant without reimbursement.
23 Specifically, Defendant has failed to reimburse Plaintiff and the Aggrieved Employees the cost of
24 using their personal cell phones for business related purposes. Defendant required that Plaintiff
25 and the Aggrieved Employees be available by cell phone and answer/use their cell phones while
26 working. This was necessary to perform their job duties. These cell phones were not provided by
27 Defendant and Defendant failed to reimburse Plaintiff and the Aggrieved Employees for the costs
28 associated with using their personal cell phones.

7. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001 and Labor Code § 226(a) by failing to issue Plaintiff and the Aggrieved Employees accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Aggrieved Employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do include the premiums, they are not at the applicable rate.

8. Defendant has violated Labor Code §§ 204(d) and 210 with respect to Plaintiff and all Aggrieved Employees. Plaintiff and all Aggrieved Employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes.

9. Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and the Aggrieved Employees.

10. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly employed by Defendant during the liability period, brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant's violation of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040.

II.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

12. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Riverside and the State of California through their acts, and by their violation of the California Labor Code, and California state common law.

13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

Civil Procedure § 395. Defendant operates within California and does business within Riverside County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Aggrieved Employees within the State of California and the county of Riverside.

14. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

III.

PARTIES

A. PLAINTIFF

15. Plaintiff ENMANUEL DE JESUS LOPEZ TORRES is a resident of California. Plaintiff was employed by Defendant as a non-exempt employee in California.

16. Upon information and belief, Plaintiff and all Aggrieved Employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 4 -2001 (Title 8 Cal. Code of Regs. § 11040.)

17. Plaintiff and all Aggrieved Employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code §2699(c).)

B. DEFENDANTS

18. Defendant MOUNTAIN VIEW COUNTRY CLUB, INC. is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 80375 Pomelo La Quinta, CA 92253. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

21. Furthermore, Defendants acted in all respects as the employers or joint employers of the Aggrieved Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Aggrieved Employees, or suffered or permitted the Aggrieved Employees to work, thereby creating a common law employment relationship, with the Aggrieved Employees. Therefore, Defendants, and each of them, employed or jointly employed the Aggrieved Employees.

IV.

FACTUAL BACKGROUND

22. Plaintiff and the Aggrieved Employees are, and at all times pertinent hereto, have been employees of Defendant.

23. Upon information and belief, Plaintiff and the Aggrieved Employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

24. On a regular and consistent basis, for all Aggrieved Employees employed by Defendant, Defendant has failed to comply with Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 2802, and IWC Wage Order 4-2001.

V.

FIRST CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

FOR PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ. FOR

VIOLATION OF LABOR CODE §§ 201, 202, 203, 204, 210, 226(A), 226.7, 512 AND 2802

25. Plaintiff, on behalf of himself and the Aggrieved Employees, realleges and incorporates by reference all previous paragraphs.

1 26. For at least one (1) year prior to the date of the letter sent to the LWDA and
2 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
3 has violated Labor Code §§ 226.7 and 512, which requires an employer to pay an additional hour
4 of compensation for each meal period the employer fails to provide. Employees are entitled to a
5 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within
6 the first five (5) hours of the shift.

7 27. Defendant failed to maintain a policy informing Plaintiff and the Aggrieved
8 Employees of these rights.

9 28. Plaintiff and the Aggrieved Employees consistently worked shifts over five (5)
10 hours. Defendant failed to provide Plaintiff and the Aggrieved Employees with proper meal
11 periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time
12 period.

13 29. Defendant has had a consistent policy of failing to pay Plaintiff and the Aggrieved
14 Employees one (1) hour of pay at the employees' regular rate of compensation for each workday
15 that the first meal period was not provided within the first (5) hours of the shift. On July 15, 2021,
16 in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for
17 calculating the one extra hour of premium pay that employees are owed if an employer fails to
18 provide a compliant meal period or rest break. Specifically, the Court held that those premium
19 payments must include the hourly value of any nondiscretionary earnings (such as a
20 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here,
21 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the
22 appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

23 30. For at least one (1) year prior to the date of the letter sent to the LWDA and
24 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
25 has violated Labor Code § 226.7 and IWC Wage Order 4, which requires an employer to provide
26 rest periods or to pay an additional one (1) hour of wages for each rest period the employer fails
27 to provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked
28 or major fraction thereof.

1 31. Defendant failed to maintain a policy informing Plaintiff and the Aggrieved
2 Employees of this right.

3 32. Defendant maintained a consistent policy of failing to provide Plaintiff and the
4 Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work
5 period or major fraction thereof. Plaintiff and the Aggrieved Employees have been required to
6 work four-hour increments (or major fractions thereof) without being provided with compliant ten
7 (10) minute rest periods.

8 33. Plaintiff and the Aggrieved Employees were not compensated with one (1) hour of
9 wages at the regular rate of compensation for each missed rest period as required by Labor Code
10 § 226.7. *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must
11 include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot
12 simply be paid at an employee's base hourly rate.

13 34. .

14 35. For at least one (1) year prior to the date of the letter sent to the LWDA and
15 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
16 has violated Labor Code § 2802. These statutes require employers to indemnify employees for all
17 necessary expenditures incurred by employees in the discharge of their duties.

18 36. Plaintiff and the Aggrieved Employees were required to incur substantial expenses
19 in direct consequent of the discharge of their duties for Defendant without reimbursement.

20 37. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and
21 the Aggrieved Employees for the cost of using their personal cell phones for business related
22 purposes. Defendant required that Plaintiff and the Aggrieved Employees be available by cell
23 phone and answer/use their cell phones while working as necessary to perform their job duties.

24 38. These cell phones were not provided by Defendant and Defendant failed to
25 reimburse Plaintiff and the Aggrieved Employees for the costs associated with using their personal
26 cell phones.

27 39. For at least one (1) year prior to the date of the letter sent to the LWDA and
28 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant

1 has violated Labor Code § 226(a)(9), which requires that every employer shall semimonthly or at
2 the time of each payment of wages, furnish each of his or her employees, an accurate itemized
3 statement in writing showing all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee. Defendant issues
5 Plaintiff and the Aggrieved Employees wage statements that do not properly indicate all applicable
6 hourly rates in effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee.

8 40. As a result of Defendant's failure to pay wages as described above, Defendant has
9 failed to properly include meal and rest premiums for Plaintiff and the Aggrieved Employees.

10 41. Defendant's failure to provide accurate itemized wages statements according to
11 Labor Code § 226(a) was all done on a regular and consistent basis.

12 42. For at least one (1) year prior to the date of the letter sent to the LWDA and
13 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
14 has violated Labor Code §203.

15 43. Numerous Aggrieved Employees including the Plaintiff are no longer employed by
16 Defendant. They were either fired or quit Defendant's employ.

17 44. Defendant's failure to pay wages, as alleged above was willful in that Defendant
18 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Aggrieved Employees
19 to penalties under Labor Code § 203, which provides that an employee's wages shall continue as
20 a penalty until paid for a period of up to thirty (30) days from the time they were due.

21 45. Defendant has failed to pay Plaintiff and others a sum certain at the time of
22 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
23 sums for thirty (30) days thereafter.

24 46. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
25 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
26 present, Defendant has violated Labor Code §§ 204(d) and 210 with respect to Plaintiff and all
27 aggrieved employees. Plaintiff and all aggrieved employees were paid after the seventh (7th) day
28 following the close of the payroll period in violation of these statutes.

1 47. Labor Code § 204 states that “The requirements of this section shall be deemed
2 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
3 paid not more than seven calendar days following the close of the payroll period.” Labor Code
4 section 210 penalizes employers for failing “to pay the wages of each employee as provided in
5 Section 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5....”

6 48. Defendant violated Labor Code §§ 204(d) and 210 by failing to pay timely wages
7 to Plaintiff and the aggrieved employees in accordance with the Labor Code.

8 49. Defendant’s violation of Labor Code §§ 204 and 210 was all done on a regular and
9 consistent basis.

10 50. As a result of the acts alleged above, Plaintiff, on behalf of himself and all other
11 aggrieved employees, seeks penalties under Labor Code section 2699, et seq. because of
12 Defendant’s violation of Labor Code §§ 204 and 210, for which a civil penalty applies under
13 PAGA.

14 51. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
15 2699, et seq. because of Defendant’s violation of Labor Code §§ 201-203, 204, 210, 226(a), 226.7,
16 512, 2802, and Wage Order 4-200, which call for civil penalties.

17 52. For each such penalty, Plaintiff and the aggrieved employees are entitled to
18 penalties in an amount to be shown at trial, subject to the following formula:

19 a. \$100 for the initial violation per employee per pay period.

20 b. \$200 for each subsequent violation per employee per pay period.

21 53. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
22 twenty-five percent (25%) to the affected employees.

23 54. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
24 LWDA¹ and mailed a letter by certified mail to each of the Defendant’s entity address, as
25 proscribed by the Code on October 21, 2021, describing Defendants’ conduct in violation of Labor
26 Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, and 2802. (see Exhibit “1.”) Plaintiff

27
28 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit
2 “2”) and a signed green return receipt by Defendant indicating that it also had received Plaintiff’s
3 notice letter (see Exhibit “3”).

4 55. As no letter evidencing the LWDA’s intention to investigate was received by
5 Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
6 action as though the LWDA had not chosen to investigate pursuant to Labor Code
7 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
8 Amended Representative Action Complaint immediately.

9 **RELIEF REQUESTED**

10 **WHEREFORE**, Plaintiff prays for the following relief:

- 11 1. For penalties under Labor Code §2699, *et seq.* for Defendant’s violation of Labor
12 Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 2802, and Wage Order 4-2001;
13 2. An award providing for payment of costs of suit;
14 3. An award of attorneys’ fees; and
15 4. Such other and further relief as this Court may deem proper and just.

16
17 DATED: March 3, 2022

KINGSLEY & KINGSLEY, APC

18
19 By: _____

Liane Katzenstein Ly

Attorneys for Plaintiff and all Aggrieved Employees

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

October 21, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Mountain View Country Club, Inc.
80375 Pomelo
La Quinta, CA 92253

Re: Enmanuel De Jesus Lopez Torres v. Mountain View Country Club, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Enmanuel De Jesus Lopez Torres (“Plaintiff”) and a proposed group of current and former employees working for MOUNTAIN VIEW COUNTRY CLUB, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by MOUNTAIN VIEW COUNTRY CLUB, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has engaged in practices that violate Labor Code §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be

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California Labor Code §2699 Penalties

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provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided. In addition, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. As such, Defendant failed to provide Plaintiff and the Proposed Class with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra*. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized

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California Labor Code §2699 Penalties

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statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issues Plaintiff and all aggrieved employees wage statements that do not properly indicate all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and they are not paid premiums at the appropriate rate of pay. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Defendant failed to pay Plaintiff and all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code §§ 204(d) and 210. Plaintiff and all aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a 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.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Liane Katzenstein Ly

LKL/km

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
2. Mountain View Country Club, Inc. via USPS Certified Mail # 7020 0640 0002 1439 8233
3. Abramson Labor Group 3580 Wilshire Blvd Ste 1260 Los Angeles, CA 90010-2513 via Electronic Mail Transmission: wza@abramsonlabor.com; dani@abramsonlabor.com

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Enmanuel De Jesus Lopez Torres

Plaintiff/Aggrieved Employee Occupation *

non-exempt employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Mountain View Country Club, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

80375 Pomelo

Employer City *

La Quinta

Employer State *	Employer Zip/Postal Code *
California ▼	92253
Employer Industry *	Employer Industry for "Other" *
Other ▼	country club, membership

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages

Provide Details of Other Violation *

Other(Maybe Multiple)

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 LWDA Letter– ...Club, Inc.pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, October 21, 2021 3:38 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

10/21/2021

LWDA Case No. LWDA-CM-849441-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Enmanuel De Jesus Lopez Torres
Employer: Mountain View Country Club, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7C46b490fd42114228ebd408d994e36c5f%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637704526761882054%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjA%7CwMDAiLCJQIjoiv2luMzliLCJBTiI6Ikh1haWwiLCJXVCi6Mn0%3D%7C1000&data=60oz8LyAW8LT4ekITa56iDTysSVhGTf3XgDI3TnyKIY%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, October 21, 2021 3:38 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-849441-21

Order Number: ORD-000139744

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 10/21/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Ste 1200

Encino, California

91436

EXHIBIT "3"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mountain View Country Club, Inc.
74770 Highway 111, Suite 205
Indian Wells, California 92210



9590 9402 7019 1225 1722 01

2. Article Number (Transfer from service label)

7020 0640 0002 1439 7922

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *John O'Shea*☐ Agent☐ Addressee

B. Received by (Printed Name)

John O'Shea

C. Date of Delivery

*12/16/21*D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ 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 Restricted
Delivery☐ Signature Confirmation™☐ Signature Confirmation
Restricted Delivery

USPS TRACKING #



EN BERNARDINO CA 923

6 DEC 2001 PM 4 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7019 1225 1722 01

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
MOUNTAIN VIEW COUNTRY CLUB, INC.

