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individually, and on behalf of all others similarly situated.

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
04/25/2022
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

KATHRYN SARINA SERNA and
MARGARITA VERDUZCO, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

VISALIA COUNTRY CLUB; and DOES 1
through 20, inclusive,

Defendants.

Case No. VCU290181

Assigned for All Purposes to:
Judge David Mathias
Dept. 01

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

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Unlawful Deductions;
6. Unlawful Retention of Gratuities;
7. Failure to Reimburse Business Expenses;
8. Failure to Provide Accurate Itemized Wage Statements;
9. Failure to Pay All Wages Due Upon Separation of Employment;
10. Violation of Business and Professions Code §§ 17200, *et seq.*; and
11. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

1 Plaintiffs Kathryn Sarina Serna and Margarita Verduzco, individually and on behalf of
2 others similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Kathryn Sarina Serna and Margarita Verduzco (“Plaintiffs”) brings this
5 putative class action and representative action pursuant to the Private Attorneys General Act of
6 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendants Visalia Country Club; and DOES 1
7 through 20, inclusive (collectively, “Defendants”), on Plaintiffs’ behalf and on behalf of
8 California citizens who are and were employed by Defendants as non-exempt employees
9 throughout California.

10 2. Defendants are in the hospitality industry.

11 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
14 competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
 - 18 (b) failing to pay wages for non-productive time, including time spent in rest
19 breaks;
 - 20 (c) failing to provide lawful meal periods or compensation in lieu thereof;
 - 21 (d) failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
 - 23 (e) making improper deductions from employees’ earned wages;
 - 24 (f) failing to permit Plaintiffs and class members to retain all gratuities.
 - 25 (g) failing to reimburse necessary business-related costs;
 - 26 (h) failing to provide accurate itemized wage statements; and
 - 27 (i) failing to pay all wages due upon separation of employment.
- 28

5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all others similarly situated in California to recover, among other things, unpaid wages, unreimbursed business expenses, benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 246, 351, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiffs are residents of California and worked for Defendants during the relevant time periods as alleged herein.

11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as

1 employers, whose employees were and are engaged throughout this county and the State of
2 California.

3 12. Plaintiffs are unaware of the true names or capacities of the defendants sued
4 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend
5 this Complaint and serve such fictitiously named defendants once their names and capacities
6 become known.

7 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
8 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
9 all relevant times.

10 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
11 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
12 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
13 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
14 employer and/or joint employer of Plaintiffs and the class members.

15 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
16 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
17 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
18 the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
19 official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the scope of
21 such agency or employment, or ratified each and every act or omission complained of herein. At
22 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
23 each and all the other Defendants in proximately causing the damages herein alleged.

24 17. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
26 omissions, occurrences, and transactions alleged herein.

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1 **CLASS ACTION ALLEGATIONS**

2 18. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's
3 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
4 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

5 19. All claims alleged herein arise under California law for which Plaintiffs seek
6 relief authorized by California law.

7 20. Plaintiffs' proposed class consists of and is defined as follows:

8 Class

9 All California citizens currently or formerly employed by Defendants as non-
10 exempt employees in the State of California at any time between July 27, 2016¹
11 and the date the class is certified ("Class").

12 21. Plaintiffs also seek to certify the following subclasses of employees:

13 Waiting Time Subclass

14 All members of the Class who separated their employment with Defendants at any
15 time between July 27, 2017 and the date the classes are certified ("Waiting Time
16 Subclass").

17 22. Plaintiffs reserve the right to modify or re-define the Class, establish additional
18 subclasses, or modify or re-define any class or subclass definition as appropriate based on
19 investigation, discovery, and specific theories of liability.

20 23. Members of the Class and the Waiting Time Subclass described above will be
21 collectively referred to as "Class Members."

22 24. There are common questions of law and fact as to the Class Members that
23 predominate over any questions affecting only individual members including, but not limited to,
24 the following:

25
26
27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

- (a) Whether Defendants failed to pay Plaintiffs and Class Members all wages (including minimum wages and overtime wages) for all hours worked by Plaintiffs and Class Members.
- (b) Whether Defendants required Plaintiffs and Class Members to work over eight (8) hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed to pay them overtime compensation for all overtime hours worked.
- (c) Whether Defendants failed to pay Plaintiffs and Class Members for non-productive time, including time spent in rest breaks.
- (d) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiffs and Class Members to work through meal periods without legal compensation.
- (e) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks.
- (f) Whether Defendants made unlawful deductions from Plaintiffs' and class members' wages.
- (g) Whether Defendants failed to pay Plaintiff and Class Members all gratuities.
- (h) Whether Defendants failed to reimburse Plaintiffs and Class Members for necessary business-related costs expended for the benefit of Defendants.
- (i) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements.
- (j) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.
- (k) Whether Defendants' conduct was willful or reckless.
- (l) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

1 25. There is a well-defined community of interest in this litigation and the proposed
2 Class and subclasses are readily ascertainable:

3 (a) Numerosity: The Class Members are so numerous that joinder of all
4 members is impractical. Although the members of the Class are unknown to Plaintiffs at this
5 time, on information and belief, the Class is estimated to be greater than fifty (50) individuals.
6 The identities of the Class Members are readily ascertainable by inspection of Defendants'
7 employment and payroll records.

8 (b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims
9 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
10 provisions of California's wage and hour laws entitled each Class Member to similar pay,
11 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
12 sustained by the Class Members, because they arise out of and are caused by Defendants'
13 common course of conduct as alleged herein.

14 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
15 interests of all Class Members because it is in Plaintiffs' best interest to prosecute the claims
16 alleged herein to obtain full compensation and penalties due. Plaintiffs' attorneys, as proposed
17 class counsel, are competent and experienced in litigating large employment class actions and
18 versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have
19 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
20 costs that have been and will be necessarily expended for the prosecution of this action for the
21 substantial benefit of the Class Members.

22 (d) Superiority: The nature of this action makes use of class action
23 adjudication superior to other methods. A class action will achieve economies of time, effort, and
24 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
25 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
26 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
27 to efficiently manage this case as a class action.
28

1 (e) Public Policy Considerations: Employers in the State of California violate
2 employment and labor laws every day. Current employees are often afraid to assert their rights
3 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
4 because they believe their former employers might damage their future endeavors through
5 negative references and/or other means. Class actions provide class members who are not named
6 in the complaint with a type of anonymity that allows for the vindication of their rights while
7 affording them privacy protections.

8 **GENERAL ALLEGATIONS**

9 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
10 California residents as non-exempt employees throughout California at Defendants' California
11 business location(s).

12 27. Defendants continue to employ non-exempt employees within California.

13 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
15 were knowledgeable about California's wage and hour laws, employment and personnel
16 practices, and the requirements of California law.

17 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and Class Members were entitled to receive wages for all time
19 worked (including minimum wages and overtime wages) and that they were not receiving all
20 wages earned for work that was required to be performed. In violation of the Labor Code and
21 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
22 wages and overtime wages) for all hours worked. Further Defendants failed to properly calculate
23 the overtime rate owed to Plaintiffs and Class Members.

24 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and Class Members were entitled to receive all required meal
26 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
27 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
28 Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal

1 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
2 rate of pay when they did not receive a timely, uninterrupted meal period.

3 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
6 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
7 Orders, Plaintiffs and Class Members did not receive all rest breaks or payment of one (1)
8 additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when a rest break
9 was missed, late, or interrupted.

10 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and Class Members were entitled to all earned wages without
12 unlawful deductions. In violation of the California Labor Code, Defendants made unlawful
13 deductions from Plaintiffs' and Class Members' wages.

14 33. Plaintiff is informed and believes, and thereon allege, that Defendants knew or
15 should have known that Plaintiff and Class Members were entitled to all gratuities paid, given to,
16 or left for them by a patron. In violation of the California Labor Code, Defendants failed to
17 permit Plaintiff and Class Members to retain all gratuities paid to them by customers.

18 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and Class Members were entitled to reimbursement and/or
20 indemnification for all necessary business expenditures or losses as a direct consequence of the
21 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
22 Labor Code and IWC Wage Orders, Plaintiffs and Class Members incurred necessary business
23 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were
24 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
25 directions of Defendants.

26 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
28 statements that accurately showed the following information pursuant to the Labor Code: (1)

1 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
2 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
3 deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
5 which the employee is paid; (7) the name of the employee and only the last four digits of his or
6 her social security number or an employee identification number other than a social security
7 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
8 hourly rates in effect during the pay period and the corresponding number of hours worked at
9 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
10 were not provided with accurate itemized wage statements.

11 36. Defendants knew or should have known that the Waiting Time Subclass was
12 entitled to timely payment of wages due upon separation of employment. In violation of the
13 Labor Code, the Waiting Time Subclass did not receive payment of all wages within the
14 permissible time periods.

15 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
17 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
18 failed to do so in order to increase Defendants' profits.

19 38. Therefore, Plaintiffs brings this lawsuit seeking monetary and injunctive relief
20 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover,
21 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
22 period premium payments, unpaid rest period premium payments, un-reimbursed business
23 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

27 39. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

1 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
2 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
3 wage than the minimum so fixed is unlawful.

4 41. Plaintiffs and Class Members were employees entitled to the protections of Labor
5 Code §§ 1194 and 1197.

6 42. During the relevant time period, Defendants failed to pay Plaintiffs and Class
7 Members all wages owed when Defendants did not pay for all hours worked.

8 43. During the relevant time period, Defendants failed to pay at least minimum wage
9 to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

10 44. Defendants' failure to pay Plaintiffs and Class Members the required minimum
11 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class
12 Members are entitled to recover the unpaid balance of their minimum wage compensation as
13 well as interest, costs, and attorneys' fees.

14 45. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
15 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
16 interest thereon.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME**

19 (Violation of Labor Code §§ 510, 1194, 1198; Violation of IWC Wage Order § 3)

20 46. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 47. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
23 unlawful to employ persons without compensating them at a rate of pay either one and one-half
24 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
25 worked by the person on a daily or weekly basis.

26 48. Specifically, the applicable IWC Wage Orders provide that Defendants are and
27 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
28 and one-half times (1½) their regular rate of pay when working and for all hours worked in

1 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
2 eight (8) hours of work on the seventh day of work in a workweek.

3 49. The applicable IWC Wage Orders further provide that Defendants are and were
4 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
5 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
6 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

7 50. California Labor Code § 510 codifies the right to overtime compensation at one
8 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
9 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
10 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
11 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
12 seventh day of work in a workweek.

13 51. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
14 of more than six days in a workweek is only permissible if the employer pays proper overtime
15 compensation as set forth herein.

16 52. Plaintiffs and Class Members were employees entitled to the protections of
17 California Labor Code §§ 510 and 1194.

18 53. During the relevant time period, Defendants required Plaintiffs and Class
19 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a
20 seventh consecutive day of work, entitling them to overtime wages.

21 54. During the relevant time period, Defendants failed to pay Plaintiffs and Class
22 Members overtime wages for all overtime hours worked. To the extent these hours qualify for
23 the payment of overtime wages, Plaintiffs and Class Members were not paid proper overtime
24 wages. When Defendants paid overtime wages, they were sometimes miscalculated because,
25 among other reasons, Defendants did not include all non-discretionary pay in the calculation.

26 55. In violation of California law, Defendants knowingly and willfully refused to
27 perform their obligations and compensate Plaintiffs and Class Members for all wages earned and
28 all hours worked.

56. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of overtime compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

57. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

58. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

59. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

60. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

61. Labor Code § 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

62. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (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.

1 63. During the relevant time period, Plaintiffs and Class Members did not receive
2 compliant meal periods for working more than five (5) and ten (10) hours per day because their
3 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
4 second meal period.

5 64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
6 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
7 compensation for each work day that a compliant meal period is not provided.

8 65. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
9 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
10 and section 11 of the applicable IWC Wage Order.

11 66. As a result of Defendants' failure to pay Plaintiffs and Class Members an
12 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and
13 Class Members suffered and continue to suffer a loss of wages and compensation.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PERMIT REST BREAKS**

16 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

17 67. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

19 68. Labor Code § 226.7(a) provides that no employer shall require an employee to
20 work during any rest period mandated by the IWC Wage Orders.

21 69. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
22 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
23 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
24 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
25 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

26 70. During the relevant time period, Plaintiffs and Class Members did not receive a
27 ten (10) minute rest period for every four (4) hours or major fraction thereof worked, including
28

1 working in excess of ten (10) hours in a day, because they were required to work through their
2 rest periods and/or were not authorized to take their rest periods.

3 71. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
4 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
5 compensation for each work day that a compliant rest period is not provided.

6 72. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
7 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
8 226.7(b) and section 12 of the applicable IWC Wage Order.

9 73. As a result of Defendants' failure to pay Plaintiffs and Class Members an
10 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
11 Members suffered and continue to suffer a loss of wages and compensation.

12 **FIFTH CAUSE OF ACTION**

13 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

14 (Violation of Labor Code § 221, 223, 224; Violation of IWC Wage Order)

15 74. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
16 though fully set forth herein.

17 75. Labor Code § 221 provides that employers may not collect or receive from an
18 employee any part of wages theretofore paid by said employer to said employee. Labor Code §
19 223 provides that where a contract requires an employer to maintain the designated wage scale,
20 it is unlawful to pay a lower wage while purporting to pay the wage designated by contract.
21 Labor Code § 224 prohibits employers from making deductions from an employee's wages not
22 authorized by the employee in writing or permitted by law.

23 76. During the relevant time period, Defendants had a policy and practice of making
24 unlawful deductions from earned wages of Plaintiffs and Class Members.

25 77. As a result of Defendants' failure to refrain from making improper deductions
26 from earned wages, Plaintiffs and Class Members suffered and continue to suffer a loss of wages
27 and compensation, the exact amount of damages and/or penalties is all in an amount to be shown
28 according to proof at trial.

1 **SIXTH CAUSE OF ACTION**

2 **UNLAWFUL RETENTION OF GRATUITIES**

3 (Violation of Labor Code § 351)

4 78. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 79. California Labor Code § 351 provides that no employer shall collect, take, or
7 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or
8 deduct any amount from wages due to an employee on account of a gratuity, or require an
9 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the
10 wages due the employee from the employer.

11 80. During the relevant time period, Defendants had a policy and practice of
12 improperly retaining all or part of gratuities left by patrons for Plaintiffs and class members.

13 81. As a result of Defendants' practice of improperly retaining Plaintiffs' and class
14 members' gratuities, Plaintiff and class members suffered and continue to suffer a loss of wages,
15 the exact amount of damages and/or penalties is all in an amount to be shown according to proof
16 at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 (Violation of Labor Code §§ 2800, 2802)

20 82. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 83. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his
23 employee for losses caused by the employer's want of ordinary care."

24 84. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
27 the employer"

85. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

86. Labor Code § 2802(c) states that “[f]or purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

87. During the relevant time period, Plaintiffs and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants.

88. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiffs and Class Members for their expenses due to Defendants' knowing and intentional failure to reimburse necessary business expenditures in connection with Plaintiffs' and Class Members' work and job duties.

89. As a direct result, Plaintiffs and Class Members have suffered and continue to suffer losses, and therefore seek complete reimbursement and indemnification of necessary business expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

90. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

91. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for

1 which the employee is paid, (7) the name of the employee and the last four digits of his or her
2 social security number or an employee identification number other than a social security number,
3 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each
5 hourly rate by the employee.

6 92. During the relevant time period, Defendants have knowingly and intentionally
7 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
8 and Class Members. The deficiencies include, among other things, the failure to correctly state
9 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
10 number of hours worked at each hourly rate by Plaintiffs and Class Members.

11 93. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their
13 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an
14 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
15 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and
16 their protected interest in receiving, accurate itemized wage statements under Labor Code
17 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
18 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours
19 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to
20 file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to
21 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur
22 these costs had Defendants provided the accurate hours worked, wages earned, and rates of pay.
23 This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
24 Defendants.

25 94. Plaintiffs and Class Members are entitled to recover from Defendants the greater
26 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
27 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
28

1 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
2 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

3 95. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
4 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
5 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
6 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
7 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
8 to proof at trial.

9 NINTH CAUSE OF ACTION

10 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

11 (Violation of Labor Code §§ 201, 202, and 203)

12 96. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
13 though fully set forth herein.

14 97. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
15 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
16 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
17 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
18 two (72) hours previous notice of an intention to quit, in which case the employee is entitled to
19 his or her wages at the time of quitting.

20 98. During the relevant time period, Defendants willfully failed to pay the Waiting
21 Time Subclass all their earned wages upon termination, including, but not limited to, proper
22 minimum wage and overtime compensation, meal period premiums, and rest period premiums
23 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
24 employ.

25 99. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
26 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
27 violation of Labor Code §§ 201 and 202.

100. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

101. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

TENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

102. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

103. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

104. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to suffer injuries-in-fact.

105. Defendants' policies and practices violated state law in at least the following respects:

- (a) Failing to pay all wages earned (including minimum wage and overtime wages) to Plaintiffs and Class Members at the proper rate in violation of Labor Code §§ 204, 510, 1194, 1194.2, 1197, 1198.
- (b) Failing to provide compliant meal periods without paying Plaintiffs and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512.

- 1 (c) Failing to authorize or permit compliant rest breaks without paying
2 Plaintiffs and Class Members premium wages for every day said rest
3 breaks were not authorized or permitted in violation of Labor Code §
4 226.7.
- 5 (d) Failing to refrain from making unlawful deductions from wages in
6 violation of Labor Code §§ 221, 223, and 224.
- 7 (e) Failing to permit Plaintiff and Class Members to retain all gratuities paid
8 by customers in violation of Labor Code § 351.
- 9 (f) Failing to reimburse Plaintiffs and Class Members for necessary business-
10 related expenses in violation of Labor Code §§ 2800 and 2802.
- 11 (g) Failing to provide Plaintiffs and Class Members with accurate itemized
12 wage statements in violation of Labor Code § 226.
- 13 (h) Failing to timely pay all earned wages to the members of the Waiting
14 Time Subclass upon separation of employment in violation of Labor Code
15 §§ 201, 202, and 203.

16 106. As alleged herein, Defendants systematically engaged in unlawful conduct in
17 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
18 (minimum and overtime wages), failing to provide meal periods and rest breaks or
19 compensation in lieu thereof, making unlawful deductions, failing to reimburse necessary
20 business-related costs and expenses, failing to furnish accurate wage statements, and failing to
21 pay all wages due and owing upon separation of employment in a timely manner to the Waiting
22 Time Subclass, all in order to decrease their costs of doing business and increase their profits.

23 107. At all relevant times herein, Defendants held themselves out to Plaintiffs and
24 Class Members as being knowledgeable concerning the labor and employment laws of
25 California.

26 108. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
27 and Class Members wages and monies, thereby creating for Defendants an artificially lower
28

1 cost of doing business in order to undercut their competitors and establish and/or gain a greater
2 foothold in the marketplace.

3 109. By violating the foregoing statutes and regulations as herein alleged, Defendants'
4 acts constitute unfair and unlawful business practices under California Business and Professions
5 Code §§ 17200, *et seq.*

6 110. As a result of the unfair and unlawful business practices of Defendants as alleged
7 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
8 restitution in an amount to be shown according to proof at trial.

9 111. Plaintiffs seeks to enforce important rights affecting the public interest within the
10 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
11 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members,
12 and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class
13 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
14 Procedure § 1021.5.

15 **ELEVENTH CAUSE OF ACTION**

16 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

17 112. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs
18 as though fully set forth herein.

19 113. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
20 for a civil penalty to be assessed and collected by the Labor and Workforce Development
21 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or
22 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
23 action brought by an aggrieved employee on behalf of himself or herself and other current or
24 former employees pursuant to the procedures specified in Labor Code § 2699.3.

25 114. For all provisions of the Labor Code except those for which a civil penalty is
26 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
27 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
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1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
2 period in which Defendants violated these provisions of the Labor Code.

3 115. Defendants' conduct violates numerous Wage Order and Labor Code sections,
4 including, but not limited to, the following:

- 5 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 246, 510, 1182.12,
6 1194, 1197, and 1198 for failure to timely pay all earned wages
7 (including minimum wage and overtime wages) owed to Plaintiffs and
8 other aggrieved employees during employment and upon separation of
9 employment as herein alleged;
- 10 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
11 periods to Plaintiffs and other aggrieved employees and failure to pay
12 premium wages for missed meal periods as herein alleged;
- 13 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
14 Plaintiffs and other aggrieved employees and failure to pay premium
15 wages for missed rest periods as herein alleged;
- 16 d. violation of Labor Code §§ 221, 223, and 224 for the unlawful deduction
17 from Plaintiffs' and other aggrieved employees' wages as herein alleged;
- 18 e. violation of Labor Code § 351 for the unlawful retention of Plaintiffs'
19 and other aggrieved employees' gratuities as herein alleged;
- 20 f. violation of Labor Code § 226 for failure to provide accurate itemized
21 wage statements to Plaintiffs and other aggrieved employees as herein
22 alleged;
- 23 g. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
24 accurate and complete records showing, among other things, the hours
25 worked daily by and the wages paid to aggrieved employees; and
- 26 h. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
27 Plaintiffs and other aggrieved employees for necessary business expenses
28 as herein alleged.

116. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore is properly suited to represent the interests of all other aggrieved employees.

117. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

118. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

119. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

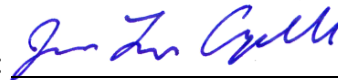
On Plaintiffs' behalf and on behalf of all others similarly situated, Plaintiffs pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;
2. For appointment of Kathryn Sarina Serna and Margarita Verduzco as class representatives;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

- 1 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 2 11. For an order requiring Defendants to restore and disgorge all funds to each
- 3 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,
- 4 or fraudulent and, therefore, constituting unfair competition under Business and Professions
- 5 Code §§ 17200, *et seq.*;
- 6 12. For pre-judgment interest;
- 7 13. For civil penalties;
- 8 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
- 9 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
- 10 226(e), 1194, and 2698 *et seq.*; and
- 11 15. For such other relief as the Court deems just and proper.
- 12

13 Dated: April 25, 2022

AEGIS LAW FIRM, PC

14 By: 

15 Jessica L. Campbell

16 Attorneys for Plaintiffs Kathryn Sarina Serna
17 and Margarita Verduzco

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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On April 25, 2022, I served the foregoing document entitled:

5 • **FIRST AMENDED CLASS ACTION COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
6 copy thereof on the party(ies) addressed below as follows:

7 Charlie Harmamjian

8 Ian Wieland

SAGASER, WATKINS & WIELAND, P.C.

5260 North Palm Avenue, Suite 400

9 Fresno, CA 93704

10 Telephone: 559.421.7000

11 Fax: 559.473.1483

charles@sw2law.com

ian@sw2law.com

12 *Attorneys for Defendant:*

13 VISALIA COUNTRY CLUB

14 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing. Under that practice it would be deposited with the U.S.
16 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
17 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

18 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
19 practice of Aegis Law Firm PC for collection and processing correspondence for
20 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

21 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
22 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

23 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
24 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

25 ///

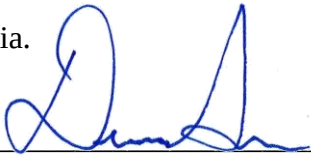
26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on April 25, 2022, at Irvine, California.

4 

5 Delaney Graves