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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NEVADA

LIAM MORIARTY, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

TAHOE CLUB EMPLOYEE COMPANY,
a Colorado corporation; TAHOE CLUB
COMPANY, LLC, a Delaware limited
liability company; CC NORTHSTAR
HOLDINGS, LLC, a California limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

FILED

BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA

01/17/2023

JASON B. GALKIN, CLERK OF THE COURT
ANGELA AVINA, DEPUTY

Case No.: CU0000376

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Liam Moriarty, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 ("IWC") Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff's
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 "minimal diversity" jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Truckee, County of Nevada, in accordance with California Corporations Code
7 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
8 Defendants employ persons in this county, and employed Plaintiff in this county, and thus a
9 substantial portion of the transactions and occurrences related to this action occurred in this
10 county.

11 THE PARTIES

12 4. Plaintiff Liam Moriarty is a resident of Truckee, in Nevada County, California.
13 Defendants employed Plaintiff as an hourly paid, non-exempt seasonal employee from
14 approximately May 2017 to July 2022. Plaintiff worked as a Guest Assistant and Golf Guest
15 Services Professional at Defendants' location in Truckee, California. During his employment,
16 Plaintiff typically worked eight (8) hours or more per day and five (5) days per week.
17 Plaintiff's primary job duties included, without limitation, corralling golf carts, assisting
18 golfers with bags, cleaning golf carts, and maintaining the driving range.

19 5. TAHOE CLUB EMPLOYEE COMPANY was and is, upon information and
20 belief, a Colorado corporation, and at all times hereinafter mentioned, an employer whose
21 employees are engaged throughout this county and the State of California.

22 6. TAHOE CLUB COMPANY, LLC was and is, upon information and belief, a
23 Delaware limited liability company, and at all times hereinafter mentioned, an employer
24 whose employees are engaged throughout this county and the State of California.

25 7. CC NORTHSTAR HOLDINGS, LLC was and is, upon information and belief,
26 a California limited liability company, and at all times hereinafter mentioned, an employer
27 whose employees are engaged throughout this county and the State of California.

28 8. Plaintiff is unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
2 amend the complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
5 were the partners, agents, owners, or managers of TAHOE CLUB EMPLOYEE COMPANY;
6 TAHOE CLUB COMPANY, LLC; and CC NORTHSTAR HOLDINGS, LLC at all relevant
7 times.

8 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, TAHOE CLUB
10 EMPLOYEE COMPANY; TAHOE CLUB COMPANY, LLC; CC NORTHSTAR
11 HOLDINGS, LLC and/or DOES 1 through 10 (collectively, "Defendants" or "TAHOE
12 CLUB"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
13 concert with, each of the other co-Defendants and was acting within the course and scope of
14 such agency, employment, joint venture, or concerted activity with legal authority to act on
15 the others' behalf. The acts of any and all Defendants were in accordance with, and represent,
16 the official policy of Defendants.

17 11. At all relevant times, Defendants, and each of them, ratified each and every act
18 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
19 and abetted the acts and omissions of each and all the other Defendants in proximately causing
20 the damages herein alleged.

21 12. Plaintiff is informed and believes, and thereon alleges, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 13. Under California law, Defendants are jointly and severally liable as employers
25 for the violations alleged herein because they have each exercised sufficient control over the
26 wages, hours, working conditions, and employment status of Plaintiff and class members.
27 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
28 controlled their work schedule and/or conditions of employment, determined their rate of pay,

1 and maintained their employment records. Defendants suffered or permitted Plaintiff and
2 class members to work and/or “engaged” Plaintiff and class members so as to create a
3 common-law employment relationship. As joint employers of Plaintiff and class members,
4 Defendants are jointly and severally liable for the civil penalties and all other relief available
5 to Plaintiff and class members under the law.

6 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
7 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
8 members because Defendants have:

- 9 (a) jointly exercised meaningful control over the work performed by
10 Plaintiff and class members;
11 (b) jointly exercised meaningful control over Plaintiff’s and class members’
12 wages, hours, and working conditions, including the quantity, quality
13 standards, speed, scheduling, and operative details of the tasks
14 performed by Plaintiff and class members;
15 (c) jointly required that Plaintiff and class members perform work which is
16 an integral part of Defendants’ businesses; and
17 (d) jointly exercised control over Plaintiff and class members as a matter of
18 economic reality in that Plaintiff and class members were dependent on
19 Defendants, who shared the power to set the wages of Plaintiff and class
20 members and determined their working conditions, and who jointly
21 reaped the benefits from the underpayment of their wages and
22 noncompliance with other statutory provisions governing their
23 employment.

24 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
25 there has existed a unity of interest and ownership between Defendants such that any
26 individuality and separateness between the entities has ceased.

27 16. TAHOE CLUB EMPLOYEE COMPANY; TAHOE CLUB COMPANY, LLC;
28 CC NORTHSTAR HOLDINGS, LLC; and DOES 1 through 10 are therefore alter egos of

1 each other.

2 17. Adherence to the fiction of the separate existence of Defendants would permit
3 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
4 from liability for the wrongful acts committed by them under the name TAHOE CLUB.

5 18. Plaintiff further alleges, upon information and belief, that Defendants TAHOE
6 CLUB EMPLOYEE COMPANY; TAHOE CLUB COMPANY, LLC; and CC NORTHSTAR
7 HOLDINGS, LLC are alter egos of each other for the following reasons:

- 8 (a) On the California Secretary of State's website
9 (<https://bizfileonline.sos.ca.gov/>), TAHOE CLUB EMPLOYEE
10 COMPANY; TAHOE CLUB COMPANY, LLC; and CC NORTHSTAR
11 HOLDINGS, LLC have the same mailing address, which is "13051
12 Fairway Drive, Truckee, CA 96161";
- 13 (b) According to "Statement of Information" forms filed with the California
14 Secretary of State, TAHOE CLUB EMPLOYEE COMPANY; TAHOE
15 CLUB COMPANY, LLC; and CC NORTHSTAR HOLDINGS, LLC
16 share common officers and/or managers, including, but not limited to,
17 Brian Helm and Hayes Parzybok;
- 18 (c) According to "Statement of Information" forms filed with the California
19 Secretary of State, CC NORTHSTAR HOLDINGS, LLC serves as the
20 manager and/or member of TAHOE CLUB COMPANY, LLC;
- 21 (d) According to "Statement of Information" forms filed with the California
22 Secretary of State, TAHOE CLUB EMPLOYEE COMPANY; TAHOE
23 CLUB COMPANY, LLC; and CC NORTHSTAR HOLDINGS, LLC
24 share the same agent for service of process, "CORPORATION
25 SERVICE COMPANY WHICH WILL DO BUSINESS IN
26 CALIFORNIA AS CSC – LAWYERS INCORPORATING SERVICE
27 (1592199)";
- 28 (e) On information and belief, TAHOE CLUB EMPLOYEE COMPANY;

1 TAHOE CLUB COMPANY, LLC; and CC NORTHSTAR
2 HOLDINGS, LLC utilize the same standardized employment forms and
3 issue the same employment policies.

4 **GENERAL ALLEGATIONS**

5 19. Defendants own and operate Tahoe Mountain Club, a year-round social club
6 that manages two golf courses, four restaurants, a ski lodge, wedding venues, valet services,
7 lounges, as well as swim, tennis, and fitness centers. Upon information and belief,
8 Defendants maintain a single, centralized Human Resources ("HR") department at their
9 company headquarters in Truckee, California, which is responsible for the recruiting and
10 hiring of new employees, and communicating and implementing Defendants' company-wide
11 policies, including timekeeping policies and meal and rest period policies, to employees
12 throughout California.

13 20. In particular, Plaintiff and class members, on information and belief, received
14 the same standardized documents and/or written policies. Upon information and belief, the
15 usage of standardized documents and/or written policies, including new-hire documents,
16 indicate that Defendants dictated policies at the corporate level and implemented them
17 company-wide, regardless of their employees' assigned locations or positions. Upon
18 information and belief, Defendants set forth uniform policies and procedures in several
19 documents provided at an employee's time of hire.

20 21. Upon information and belief, Defendants maintain a centralized Payroll
21 department at their company headquarters in Truckee, California, which processes payroll for
22 all non-exempt, hourly paid employees working for Defendants at their various locations and
23 jobsites in California, including Plaintiff and class members. Based upon information and
24 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
25 employees in California, irrespective of their work locations. Upon information and belief,
26 Defendants process payroll for departing employees in the same manner throughout the State
27 of California, regardless of the manner in which each employee's employment ends.

28 22. Defendants continue to employ non-exempt or hourly paid employees in

1 California.

2 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
4 and advisors knowledgeable about California labor and wage law, employment and personnel
5 practices, and about the requirements of California law.

6 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
7 members were not paid for all hours worked because all hours worked were not recorded.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive certain wages for
10 overtime compensation and that they were not receiving certain wages for overtime
11 compensation.

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to be paid at a regular rate
14 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
15 premiums, that included as eligible income all remuneration required by law, including but not
16 limited to, all income derived from incentive pay, nondiscretionary bonuses, mandatory
17 service charges, and/or other forms of compensation, but failed to include all forms of
18 remuneration in calculating the regular rate of pay for Plaintiff and class members.

19 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive at least minimum
21 wages for compensation and that they were not receiving at least minimum wages for work
22 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
23 and class members were not paid at least minimum wages for work done off-the-clock.

24 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to meal periods in
26 accordance with the California Labor Code and applicable IWC Wage Order or payment of
27 one (1) additional hour of pay at their regular rates of pay when they were not provided with
28 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members

1 were not provided with all meal periods or payment of one (1) additional hour of pay at their
2 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
3 period.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to rest periods in
6 accordance with the California Labor Code and applicable IWC Wage Order or payment of
7 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
8 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
9 and class members were not authorized and permitted to take compliant rest periods, nor did
10 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
11 pay at their regular rates of pay when they were not authorized and permitted to take a
12 compliant rest period.

13 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive complete and
15 accurate wage statements in accordance with California law. In violation of the California
16 Labor Code, Plaintiff and class members were not provided complete and accurate wage
17 statements.

18 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that they had a duty to maintain accurate and complete payroll records in
20 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
21 knowingly, and intentionally failed to do so.

22 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to timely payment of all
24 wages earned upon termination of employment. In violation of the California Labor Code,
25 Plaintiff and class members did not receive payment of all wages due, including, but not
26 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
27 permissible time periods.

28 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to timely payment of wages
2 during their employment. In violation of the California Labor Code, Plaintiff and class
3 members did not receive payment of all wages, including, but not limited to, overtime wages,
4 minimum wages, and/or meal and rest period premiums, within permissible time periods.

5 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to suitable seating and/or
7 were entitled to sit when it did not interfere with the performance of their duties and also have
8 seats nearby to use during a lull in tasks that do require moving about or standing. In
9 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
10 provide Plaintiff and class members with suitable seating.

11 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive full
13 reimbursement for all business-related expenses and costs they incurred during the course and
14 scope of their employment and that they did not receive full reimbursement of applicable
15 business-related expenses and costs incurred.

16 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants knew or should have known that Defendants had a duty to provide
18 Plaintiff and class members with written notice of the material terms of their employment with
19 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

20 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants knew or should have known that they had a duty to compensate
22 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
23 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
24 falsely represented to Plaintiff and class members that they were properly denied wages, all in
25 order to increase Defendants' profits.

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 38. At all times herein set forth, PAGA provides that any provision of law under
28 the California Labor Code and applicable IWC Wage Order that provides for a civil penalty to

1 be assessed and collected by the LWDA for violations of the California Labor Code and
2 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
3 civil action brought on behalf of themselves and other current or former employees pursuant
4 to procedures outlined in California Labor Code section 2699.3.

5 39. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
6 person who was employed by the alleged violator and against whom one or more of the
7 alleged violations was committed.”

8 40. Plaintiff and other current and former employees of Defendants are “aggrieved
9 employees” as defined by California Labor Code section 2699(c) in that they are all
10 Defendants’ current or former employees and one or more of the alleged violations were
11 committed against them.

12 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
13 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
14 following requirements have been met:

- 15 (a) The aggrieved employee or representative shall give written notice by
16 online filing with the LWDA and by certified mail to the employer of
17 the specific provisions of the California Labor Code alleged to have
18 been violated, including the facts and theories to support the alleged
19 violation.
- 20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The LWDA shall notify the employer and the aggrieved employee or
24 representative by certified mail that it does not intend to investigate the
25 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
26 the postmark date of the aggrieved employee’s notice. Upon receipt of
27 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
28 (65) calendar days of the postmark date of the aggrieved employee’s

1 notice, the aggrieved employee may commence a civil action pursuant
2 to California Labor Code section 2699 to recover civil penalties.

3 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
4 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
5 provision other than those listed in Section 2699.5 after the following requirements have been
6 met:

- 7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of
9 the specific provisions of the California Labor Code alleged to have
10 been violated (other than those listed in Section 2699.5), including the
11 facts and theories to support the alleged violation.
- 12 (b) An aggrieved employee's notice filed with the LWDA pursuant to
13 2699.3(c) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The employer may cure the alleged violation within thirty-three (33)
16 calendar days of the postmark date of the notice sent by the aggrieved
17 employee or representative. The employer shall give written notice
18 within that period of time by certified mail to the aggrieved employee or
19 representative and by online filing with the LWDA if the alleged
20 violation is cured, including a description of actions taken, and no civil
21 action pursuant to Section 2699 may commence. If the alleged violation
22 is not cured within the 33-day period, the aggrieved employee may
23 commence a civil action pursuant to Section 2699.

24 43. On November 8, 2022, Plaintiff provided written notice by online filing to the
25 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
28 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The

1 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
2 Plaintiff PAGA Case Number LWDA-CM-918480-22. A true and correct copy of Plaintiff's
3 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

4 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
5 sent the notice described above to the LWDA, and the LWDA has not responded that it
6 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

7 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
10 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

11 46. California Labor Code section 558(a) provides "[a]ny employer or other person
12 acting on behalf of an employer who violates, or causes to be violated, a section of this
13 chapter or any provision regulating hours and days of work in any order of the Industrial
14 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
15 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee
16 was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
18 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
19 to any other civil or criminal penalty provided by law."

20 47. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
22 rights by violating various sections of the California Labor Code as set forth above.

23 48. As set forth below, Defendants have violated numerous provisions of both the
24 California Labor Code sections regulating hours and days of work as well as the applicable
25 IWC Wage Order.

26 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
28 private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all

1 other aggrieved employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
3 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

4 **CLASS ACTION ALLEGATIONS**

5 50. Plaintiff brings this action on his own behalf, as well as on behalf of each and
6 all other persons similarly situated, and thus seeks class certification under California Code of
7 Civil Procedure section 382.

8 51. All claims alleged herein arise under California law for which Plaintiff seeks
9 relief authorized by California law.

10 52. Plaintiff's proposed class consists of and is defined as follows:

11 All persons who worked for Defendants as non-exempt, hourly
12 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

13 53. Plaintiff's proposed subclass consists of and is defined as follows:

14 All persons who worked for Defendants as non-exempt, hourly
15 paid employees in California and who received at least one wage
16 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

17 54. Members of the Class and Subclass are referred to herein as "class members."

18 55. Plaintiff reserves the right to redefine the Class and Subclass and to add
19 additional subclasses as appropriate based on further investigation, discovery, and specific
20 theories of liability.

21 56. There are common questions of law and fact as to class members that
22 predominate over questions affecting only individual members, including, but not limited to:

23 (a) Whether Defendants required Plaintiff and class members to work over
24 eight (8) hours per day, over twelve (12) hours per day, or over forty
25 (40) hours per week and failed to pay all legally required overtime
26 compensation to Plaintiff and class members;

27 (b) Whether Defendants failed to include all forms of remuneration in the
28 "regular rate" of pay as required by law for purposes of paying overtime

1 wages and/or meal and rest period premiums to Plaintiff and class
2 members;

3 (c) Whether Defendants failed to pay Plaintiff and class members at least
4 minimum wages for all hours worked;

5 (d) Whether Defendants failed to provide Plaintiff and class members with
6 meal periods;

7 (e) Whether Defendants failed to authorize and permit Plaintiff and class
8 members to take rest periods;

9 (f) Whether Defendants provided Plaintiff and class members with
10 complete and accurate wage statements as required by California Labor
11 Code section 226(a);

12 (g) Whether Defendants maintained accurate payroll records as required by
13 California Labor Code section 1174(d);

14 (h) Whether Defendants failed to pay earned overtime wages, minimum
15 wages, and/or meal and rest period premiums due to Plaintiff and class
16 members upon their discharge;

17 (i) Whether Defendants failed timely to pay overtime wages, minimum
18 wages, and/or meal and rest period premiums due to Plaintiff and class
19 members during their employment;

20 (j) Whether Defendants failed to provide Plaintiff and class members with
21 suitable seating;

22 (k) Whether Defendants failed to reimburse Plaintiff and class members for
23 necessary and required business-related expenditures and/or losses
24 incurred by them in the scope of their employment;

25 (l) Whether Defendants failed to provide written notice of information
26 material to Plaintiff's and class members' employment with Defendants;

27 (m) Whether Defendants engaged in unlawful and unfair business practices
28 in violation of California Business & Professions Code sections 17200,

1 *et seq.*; and

- 2 (n) The appropriate amount of damages, restitution, or monetary penalties
3 resulting from Defendants' violations of California law.

4 57. There is a well-defined community of interest in the litigation and the class
5 members are readily ascertainable:

- 6 (a) Numerosity: The class members are so numerous that joinder of all
7 members would be unfeasible and impractical. The membership of the
8 entire class is unknown to Plaintiff at this time; however, the class is
9 estimated to be greater than one hundred (100) individuals and the
10 identity of such membership is readily ascertainable by inspection of
11 Defendants' employment records.
- 12 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
13 protect the interests of each class member with whom he has a well-
14 defined community of interest, and Plaintiff's claims (or defenses, if
15 any) are typical of all class members as demonstrated herein.
- 16 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
17 protect the interests of each class member with whom he has a well-
18 defined community of interest and typicality of claims, as demonstrated
19 herein. Plaintiff acknowledges that he has an obligation to make known
20 to the Court any relationship, conflicts or differences with any class
21 member. Plaintiff's attorneys, the proposed class counsel, are versed in
22 the rules governing class action discovery, certification, and settlement.
23 Plaintiff has incurred, and throughout the duration of this action, will
24 continue to incur costs and attorneys' fees that have been, are, and will
25 be necessarily expended for the prosecution of this action for the
26 substantial benefit of each class member.
- 27 (d) Superiority: The nature of this action makes the use of class action
28 adjudication superior to other methods. A class action will achieve

1 economies of time, effort, and expense as compared with separate
2 lawsuits, and will avoid inconsistent outcomes because the same issues
3 can be adjudicated in the same manner and at the same time for the
4 entire class.

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

14 **FIRST CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

16 **(Against all Defendants)**

17 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 59. Labor Code section 1198 makes it illegal to employ an employee under
20 conditions of labor that are prohibited by the applicable wage order. California Labor Code
21 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
22 be the . . . standard conditions of labor for employees. The employment of any employee . . .
23 under conditions of labor prohibited by the order is unlawful.”

24 60. California Labor Code section 1198 and the applicable IWC Wage Order
25 provide that it is unlawful to employ persons without compensating them at a rate of pay
26 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
27 number of hours worked by the person on a daily or weekly basis.

28 61. Specifically, the applicable IWC Wage Order provides that Defendants are and

1 were required to pay Plaintiff and class members working more than eight (8) hours in a day
2 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
3 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
4 workweek.

5 62. The applicable IWC Wage Order further provides that Defendants are and were
6 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
7 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
8 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
9 employee, including nondiscretionary bonuses and incentive pay.

10 63. California Labor Code section 510 codifies the right to overtime compensation
11 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
12 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
13 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
14 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
15 in a day on the seventh (7th) day of work.

16 64. During the relevant time period, Defendants willfully failed to pay all overtime
17 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
18 class members were not paid overtime premiums for all of the hours they worked in excess of
19 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
20 hours in a week, because all hours worked were not recorded.

21 65. During the relevant period, Defendants had, and continue to have, a company-
22 wide policy and/or practice of understaffing their locations while assigning heavy workloads,
23 resulting in a failure to provide Plaintiff and class members with adequate meal period
24 coverage. As a result of this lack of meal period coverage, Plaintiff and class members were
25 not always afforded uninterrupted 30-minute meal periods during shifts when they were
26 entitled to receive a meal period. For example, Plaintiff was often required to continue
27 performing his duties during his unpaid meal periods. Additionally, Defendants, on a
28 company-wide basis, had a practice of failing to schedule meal periods which, in conjunction

1 with the assignment of heavy workloads, further caused Plaintiff and class members to not be
2 relieved of their duties for compliant meal periods. Thus, Plaintiff's and class members' meal
3 periods were missed or interrupted to complete their assigned workloads. Defendants did not
4 pay Plaintiff and class members for the time they continued to perform tasks during meal
5 periods.

6 66. Defendants also had, and continue to have, a policy and/or practice of requiring
7 that Plaintiff and class members carry and respond to a company-issued radio at all times. As
8 a result, Defendants' management contacted Plaintiff and class members on their company-
9 issued radios during unpaid meal periods to discuss work-related matters. For example,
10 Plaintiff was required to spend time during his meal periods answering radio calls and
11 responding to management's requests that he return to work and assist customers. Defendants
12 knew or should have known that Plaintiff and class members were performing work while off-
13 the-clock in order to meet Defendants' expectations, but failed to compensate them for this
14 time.

15 67. Furthermore, on information and belief, because Defendants frowned upon
16 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
17 class members to clock out for meal periods regardless of whether they had received a
18 compliant meal period or not, in order to strictly limit the meal penalties that would need to be
19 paid by Defendants. For example, Plaintiff was pressured by Defendants' managers to clock
20 out and record compliant meal periods on shifts when he had not, in fact, received a compliant
21 meal period. Thus, Defendants did not record all hours worked during meal periods, and
22 Plaintiff and class members performed work during meal periods for which they were not
23 paid.

24 68. Defendants knew or should have known that as a result of these company-wide
25 practices and/or policies, Plaintiff and class members were performing their assigned duties
26 off-the-clock during meal periods, and were suffered or permitted to perform work for which
27 they were not paid. Because Plaintiff and class members sometimes worked shifts of eight (8)
28 hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work

1 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
2 overtime wages for all of the overtime hours they actually worked.

3 69. Moreover, in addition to an hourly wage, Defendants paid Plaintiff and class
4 members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
5 However, in violation of the California Labor Code, Defendants failed to incorporate all
6 compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges,
7 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes
8 of calculating the overtime wage rate. Therefore, during times when Plaintiff and class
9 members worked overtime and received these other forms of pay, Defendants failed to pay all
10 overtime wages by paying a lower overtime rate than required.

11 70. For example, Defendants paid Plaintiff and class members mandatory service
12 charges which were listed on Plaintiff's and class members' wage statements as "Golf Svs
13 Chg." During pay periods that Plaintiff and class members were paid overtime wages,
14 Defendants did not incorporate the mandatory service charges into Plaintiff's and class
15 members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for
16 overtime hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times
17 their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to
18 properly calculate the overtime rates of pay based on all remuneration paid has resulted in an
19 underpayment of overtime wages to Plaintiff and class members on a company-wide basis.

20 71. Defendants' failure to pay Plaintiff and class members the balance of overtime
21 compensation as required by California law, violates the provisions of California Labor Code
22 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
23 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
24 and attorneys' fees.

25 **SECOND CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**

27 **Minimum Wages**

28 **(Against all Defendants)**

1 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
2 and every allegation set forth above.

3 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
4 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
5 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
6 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 10-2001 as
7 “the time during which an employee is subject to the control of an employer, and includes all
8 the time the employee is suffered or permitted to work, whether or not required to do so.”
9 Cal. Code. Regs. tit. 8, § 11100(2)(H) (defining “Hours Worked”).

10 74. As set forth above, due to Defendants’ policies and/or practices of
11 understaffing their locations while assigning heavy workloads, failing to schedule meal
12 periods, and requirement that employees to carry and use their company-issued radios to
13 communicate with management during unpaid meal periods, Plaintiff and class members were
14 impeded from taking all uninterrupted meal periods to which they were entitled and were
15 required to work off-the-clock during meal periods, have their meal periods interrupted,
16 and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as
17 stated, in order to prevent employees from accruing meal period penalties, upon information
18 and belief, Defendants’ management pressured employees to clock out for meal periods even
19 when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically
20 failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods
21 because these hours were not always correctly recorded.

22 75. Defendants did not pay minimum wages for all hours worked by Plaintiff and
23 class members. To the extent that these off-the-clock hours did not qualify for overtime
24 premium payment, Defendants did not pay at least minimum wages for those hours worked
25 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
26 1198.

27 76. Defendants’ failure to pay Plaintiff and class members minimum wages violates
28 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to

1 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 **THIRD CAUSE OF ACTION**

4 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**
5 **Violations**

6 **(Against all Defendants)**

7 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 78. At all relevant times herein set forth, California Labor Code section 512(a)
10 provides that an employer may not require, cause, or permit an employee to work for a period
11 of more than five (5) hours per day without providing the employee with a meal period of not
12 less than thirty (30) minutes, except that if the total work period per day of the employee is
13 not more than six (6) hours, the meal period may be waived by mutual consent of both the
14 employer and the employee. Under California law, first meal periods must start after no more
15 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

16 79. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

19 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
20 and the applicable IWC Wage Order also require employers to provide a second meal period
21 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
22 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
23 total hours worked is no more than twelve (12) hours, the second meal period may be waived
24 by mutual consent of the employer and the employee only if the first meal period was not
25 waived.

26 81. First, during the relevant time period, as stated, Defendants had, and continue
27 to have, company-wide policies and/or practices of understaffing while assigning heavy
28 workloads, and failing to schedule meal periods, which have resulted in a lack of meal period

1 coverage. Moreover, as stated, due to Defendants' company-wide policy and/or practice of
2 requiring that Plaintiff and class members carry a company-issued radio to respond to requests
3 at all times, including during meal periods, Defendants' management contacted Plaintiff and
4 class members on their company-issued radios during unpaid meal periods to discuss work-
5 related matters.

6 82. As a result, Plaintiff and class members had to work through all or part of their
7 meal periods and/or had their meal periods interrupted, which prevented Plaintiff and class
8 members from taking all timely, uninterrupted meal periods to which they were entitled. For
9 example, because of Defendants' policy and/or practice of understaffing while assigning
10 heavy workloads, Plaintiff missed his meal periods 2-3 times per week, took late meal periods
11 2-3 times per week, and had nearly every meal period interrupted due to radio
12 communications from his supervisors.

13 83. Second, as stated, on information and belief, because Defendants frowned upon
14 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
15 class members to clock out for meal periods and/or adjusted their time records to reflect
16 compliant meal periods, even when they did not receive a compliant meal period, in order to
17 strictly limit meal penalties that Defendants would otherwise owe. For example, at
18 Defendants' management's direction, Plaintiff would log that his meal period was taken
19 within the first five (5) hours of his shift, even when he took his meal periods in his seventh
20 hour of work or missed his meal periods entirely.

21 84. Third, Defendants did not provide Plaintiff and class members with second 30-
22 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
23 his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was
24 never provided a second 30-minute meal period. Plaintiff and class members did not sign
25 valid meal period waivers on days that they were entitled to meal periods and were not
26 relieved of all duties.

27 85. At all times herein mentioned, Defendants knew or should have known that, as
28 a result of these policies, Plaintiff and class members were prevented from being relieved of

1 all duties and required to perform some of their assigned duties during meal periods.
2 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
3 members meal period premiums when meal periods were late, interrupted, shortened, and/or
4 missed.

5 86. Moreover, Defendants engaged in a company-wide practice and/or policy of
6 not paying all meal period premiums owed when compliant meal periods are not provided.
7 Because of this practice and/or policy, Plaintiff and class members have not received premium
8 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
9 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal
10 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
11 premiums because Defendants systematically failed to include all forms of compensation,
12 such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other
13 forms of remuneration, in the regular rate of pay. As a result, Defendants failed to provide
14 Plaintiff and class members compliant meal periods in violation of California Labor Code
15 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

16 87. Defendants' conduct violates the applicable IWC Wage Order, and California
17 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
18 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
19 rate of compensation for each work day that the meal period was not provided.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 22 **(Against all Defendants)**

23 88. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 89. At all relevant times herein set forth, the applicable IWC Wage Order and
26 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
27 members' employment by Defendants.

28 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half
5 (3 ½) hours.

6 91. At all relevant times, California Labor Code section 226.7 provides that no
7 employer shall require an employee to work during any rest period mandated by an applicable
8 order of the California IWC. To comply with its obligation to authorize and permit rest
9 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
10 employer must “relinquish any control over how employees spend their break time, and
11 relieve their employees of all duties—including the obligation that an employee remain on
12 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
13 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
14 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
15 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
16 that a required rest period was not authorized and permitted.

17 92. During the relevant time period, Defendants regularly failed to authorize and
18 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
19 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
20 practices, including understaffing, assigning heavy workloads, and requiring employees to
21 respond to company issued radios at all times, prevented Plaintiff and class members from
22 being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest
23 periods which, coupled with Defendants’ failure to provide adequate rest period coverage,
24 further led to Plaintiff and class members not being authorized and permitted to take rest
25 periods.

26 93. Furthermore, upon information and belief, Defendants maintained and
27 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
28 and class members remain on the premises during their rest periods. Because Plaintiff and

1 class members were restricted from leaving Defendants' premises during rest periods, they
2 were denied the ability to use their rest periods freely for their own purposes, such as
3 completing personal errands. Thus, Defendants effectively maintained control over Plaintiff
4 and class members during rest periods.

5 94. As a result of Defendants' practices and policies, Plaintiff and class members
6 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
7 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
8 Plaintiff had to forego his rest periods altogether because of the heavy workload and
9 Defendants' failure to schedule rest periods for employees.

10 95. Defendants have also engaged in a company-wide practice and/or policy of not
11 paying all rest period premiums owed when compliant rest periods are not authorized and
12 permitted. Because of this practice and/or policy, Plaintiff and class members have not
13 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
14 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
15 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
16 premiums because Defendants failed to include all forms of compensation, such as incentive
17 pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of
18 remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class
19 members rest periods and failed to pay them rest period premiums due, in violation of Labor
20 Code sections 226.7 and 516, and the applicable IWC Wage Order.

21 96. Defendants' conduct violates the applicable IWC Wage Order and California
22 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
23 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
24 compensation for each work day that a compliant rest period was not authorized and
25 permitted.

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FIFTH CAUSE OF ACTION
Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage
Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)

97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

98. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

99. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

100. Because Defendants did not record the time Plaintiff and Subclass members spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

1 101. Additionally, because Defendants did not calculate Plaintiff's and Subclass
2 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
3 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
4 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of
5 net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
6 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
7 overtime wages and/or meal and rest premiums, in violation of section 226(a)(9).

8 102. The wage statement deficiencies also include, among other things, failing to list
9 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
10 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
11 for which employees were paid; failing to list the name of the employee and only the last four
12 digits of his or her social security number or an employee identification number other than a
13 social security number; failing to list the name and address of the legal entity that is the
14 employer; and/or failing to state all hours worked as a result of not recording or stating the
15 hours they worked off-the-clock.

16 103. California Labor Code section 1174(d) provides that "[e]very person employing
17 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing the hours
20 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or
22 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),
23 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
24 members showing the daily hours they worked and the wages paid thereto as a result of failing
25 to record the off-the-clock hours that they worked.

26 104. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
28 set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
6 and meal period start and stop times for Plaintiff and Subclass members, in violation of
7 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
8 falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
9 periods were taken regardless of if or when meal periods were actually taken, and thereby
10 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
11 Also, in light of Defendants’ failure to provide Plaintiff and Subclass members with second
12 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
13 and end times for second meal periods.

14 105. Plaintiff and Subclass members are entitled to recover from Defendants the
15 greater of their actual damages caused by Defendants’ failure to comply with California Labor
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
17 employee.

18 **SIXTH CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**

20 **Termination**

21 **(Against all Defendants)**

22 106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 107. This cause of action is dependent upon, and wholly derivative of, the overtime
25 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
26 Plaintiff and those class members no longer employed by Defendants upon their termination.

27 108. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two
3 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.

6 109. Defendants willfully failed to pay Plaintiff and class members who are no
7 longer employed by Defendants the earned and unpaid wages set forth above, including but
8 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either
9 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
10 employ.

11 110. Defendants' failure to pay Plaintiff and class members who are no longer
12 employed by Defendants their wages earned and unpaid at the time of discharge, or within
13 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
14 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
15 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
16 thirty (30) day maximum pursuant to California Labor Code section 203.

17 SEVENTH CAUSE OF ACTION

18 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 19 Employment

20 (Against all Defendants)

21 111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 112. This cause of action is dependent upon, and wholly derivative of, the overtime
24 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
25 Plaintiff and class members during their employment.

26 113. At all times relevant herein set forth, Labor Code section 204 provides that all
27 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
2 the month during which the labor was performed.

3 114. At all times relevant herein, Labor Code section 204 provides that all wages
4 earned by any person in any employment between the sixteenth (16th) and the last day,
5 inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
7 month.

8 115. At all times relevant herein, Labor Code section 204 provides that all wages
9 earned for labor in excess of the normal work period shall be paid no later than the payday for
10 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
11 204 provides that the requirements of this section are deemed satisfied by the payment of
12 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
13 seven (7) calendar days following the close of the payroll period.

14 116. During the relevant time period, Defendants willfully failed to pay Plaintiff and
15 class members all wages due including, but not limited to, overtime wages, minimum wages,
16 and/or meal and rest period premiums within the time periods specified by California Labor
17 Code section 204.

18 117. Defendants' failure to pay Plaintiff and class members all wages due violates
19 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
20 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

21 EIGHTH CAUSE OF ACTION

22 Violation of California Labor Code § 2802—Unpaid Business-Related Expenses

23 (Against all Defendants)

24 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 119. At all times herein set forth, California Labor Code section 2802 provides that
27 an employer must reimburse employees for all necessary expenditures and losses incurred by
28 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is

1 to prevent employers from passing off their cost of doing business and operating expenses on
2 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
3 (2014). The applicable wage order, IWC Wage Order No. 10-2001, provides that: "[w]hen
4 uniforms are required by the employer to be worn by the employee as a condition of
5 employment, such uniforms shall be provided and maintained by the employer."

6 120. During the relevant time period, Defendants required Plaintiff and class
7 members to wear uniforms bearing the "Tahoe Mountain Club" company logo, including a
8 polo shirt and a hat. However, Defendants did not provide their employees with sufficient
9 uniforms to wear for their shifts throughout the week. For example, Defendants only provided
10 Plaintiff with three polo shirts and one hat at the beginning of each season. Because
11 Defendants failed to provide Plaintiff and class members with an adequate number of uniform
12 items in relation to their scheduled shifts, Plaintiff and class members had to wash their
13 uniforms more frequently than they otherwise do laundry, and incur expenses in doing so.
14 Thus, Defendants failed to maintain uniforms they required Plaintiff and class members to
15 wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

16 121. Defendants could have provided Plaintiff and class members with an adequate
17 number of uniform items or access to laundering services; or Defendants could have
18 reimbursed employees for laundering expenses or provided a uniform maintenance allowance.
19 Instead, Defendants passed these operating costs off onto Plaintiff and class members.

20 122. Defendants' company-wide policy and/or practice of passing on their operating
21 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
22 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
23 business-related expenses and costs.

24 123. Plaintiff and class members are entitled to recover from Defendants their
25 business-related expenses incurred during the course and scope of their employment, plus
26 interest.

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NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

125. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

126. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants’ failure to include all forms of remuneration in the “regular rate” of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and other aggrieved employees, as alleged herein;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff

- 1 and other aggrieved employees with meal periods, as alleged herein;
- 2 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
- 3 applicable IWC Wage Order for Defendants' failure to authorize and
- 4 permit Plaintiff and other aggrieved employees to take rest periods, as
- 5 alleged herein;
- 6 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
- 7 IWC Wage Order for failure to provide accurate and complete wage
- 8 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 9 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 10 IWC Wage Order for failure to maintain payroll records, as alleged
- 11 herein;
- 12 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
- 13 earned wages upon termination, as alleged herein;
- 14 (i) Violation of Labor Code section 204 for failure to pay all earned wages
- 15 during employment, as alleged herein;
- 16 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
- 17 Order for failure to provide suitable seating, as set forth below;
- 18 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
- 19 and other aggrieved employees for all business expenses necessarily
- 20 incurred, as alleged herein; and
- 21 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
- 22 provide written notice of information material to Plaintiff's and other
- 23 aggrieved employees' employment with Defendants, as set forth below.

24 127. At all relevant times herein, California Labor Code section 1198 makes it

25 illegal to employ an employee under conditions of labor that are prohibited by the applicable

26 wage order. California Labor Code section 1198 requires that "... the standard conditions of

27 labor fixed by the commission shall be the ... standard conditions of labor for employees.

28 The employment of any employee ... under conditions of labor prohibited by the order is

1 unlawful.”

2 128. California Code of Regulations, Title 8, section 11100(14)(A) provides that
3 “[a]ll working employees shall be provided with suitable seats when the nature of the work
4 reasonably permits the use of seats.”

5 129. Defendants' facilities are generally similar in their layout and design and there
6 was, and continues to be, space behind greeting podiums and host stands to allow for the
7 presence and use of a seat or stool by other aggrieved employees (with reasonable or no
8 modification to these work areas) during the performance of their work duties. Defendants
9 could have provided Plaintiff and other aggrieved employees with a seat or stool at their
10 greeting podiums and host stands, but instead denied employees seating and forced Plaintiff
11 and other aggrieved employees to stand throughout the day.

12 130. Plaintiff and other aggrieved employees spent a substantial portion of their day
13 behind or at these greeting podiums and/or host stands. The nature of the work of an
14 employee performing greeting, attending, and/or host duties at greeting podiums and/host
15 stands can reasonably be accomplished from a seated position. However, as set forth herein,
16 Defendants systematically, and on a company-wide basis, do not provide seats or stools at or
17 near the greeting podiums and host stands, forcing Plaintiff and other aggrieved employees to
18 stand throughout their work shifts.

19 131. Defendants violated California Labor Code section 1198 and California Code
20 of Regulations, Title 8, section 11100(14)(A) because Plaintiff and other aggrieved employees
21 were not allowed to sit, even when it would not have interfered with the performance of their
22 duties, nor were they provided with suitable seats. Defendants' management did not inform
23 Plaintiff and other aggrieved employees that they were allowed to sit down, provide any
24 means for them to sit down, or mention any policy regarding sitting.

25 132. As a result of Defendants' company-wide policy and/or practice of prohibiting
26 employees from sitting during their shifts and company-wide failure to provide suitable
27 seating, Plaintiff and other aggrieved employees were forced to stand during shifts and denied
28 seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved

1 employees violates California Labor Code section 1198 and IWC Wage Order No. 10-2001,
2 subdivision 14(A). Plaintiff and other aggrieved employees are therefore entitled to recover
3 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 133. California Code of Regulations, Title 8, section 11100(14)(B) provides that
5 “[w]hen employees are not engaged in the active duties of their employment and the nature of
6 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
7 proximity to the work area and employees shall be permitted to use such seats when it does
8 not interfere with the performance of their duties.”

9 134. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11100(14)(B), because
11 Plaintiff and other aggrieved employees were not allowed to sit, even during lulls in their
12 work duties, nor were they provided with suitable seats in reasonable proximity to their work
13 areas.

14 135. Defendants’ California facilities are generally similar in their layout and design
15 and there was, and continues to be, space near their work areas (with reasonable or no
16 modification to these work areas) to allow for the presence and use of a seat or stool by
17 Plaintiff and other aggrieved employees during lulls in operation. Defendants could have
18 provided Plaintiff and other aggrieved employees with a seat or stool in their work areas, but
19 instead denied, and continue to deny, employees seating, forcing them to stand throughout the
20 day.

21 136. Defendants did not provide Plaintiff and other aggrieved employees with seats
22 or stools in reasonable proximity to their work areas to allow them to use seats when it would
23 not interfere with the performance of their duties for times when they were not engaged in
24 active duties that require standing. In other words, to the extent Plaintiff and other aggrieved
25 employees engaged in duties in which the nature of the work required standing, Defendants
26 denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants
27 did not inform Plaintiff and other aggrieved employees of their rights to a seat or stool under
28 California law.

1 137. As a result of Defendants' company-wide policy and/or practice of prohibiting
2 employees from sitting at any time, even when they were not engaged in active duties
3 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
4 work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and
5 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
6 employees violates California Labor Code section 1198 and IWC Wage Order No. 10-2001,
7 subdivision 14(B). Plaintiff and other aggrieved employees are therefore entitled to recover
8 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 138. At all relevant times herein, California's Wage Theft Prevention Act was
10 enacted to ensure that employers provide employees with basic information material to their
11 employment relationship at the time of hiring, and to ensure that employees are given written
12 and timely notice of any changes to basic information material to their employment. Codified
13 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
14 time of hiring, an employer must provide written notice to employees containing basic and
15 material payroll information, including, among other things, the rate(s) of pay and basis
16 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
17 including any rates for overtime, the regular payday designated by the employer, and any
18 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
19 Code § 2810.5(a)(1)(A)-(C).

20 139. At all relevant times, on information and belief, Defendants failed, on a
21 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
22 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
23 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
24 basic information regarding their employment with Defendants is in violation of Labor Code
25 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **TENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 141. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 142. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 143. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 144. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to include all forms of remuneration in the “regular rate” of pay
26 as required by law for purposes of paying overtime wages and/or meal
27 and rest period premiums to Plaintiff and class members, in violation of
28 California Labor Code sections 226.7, 510, and 1198, and the applicable

IWC Wage Order, as alleged herein;

- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and
- (i) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

145. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified

1 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
2 time of hiring, an employer must provide written notice to employees containing basic and
3 material payroll information, including, among other things, the rate(s) of pay and basis
4 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
5 including any rates for overtime, the regular payday designated by the employer, and any
6 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
7 Code § 2810.5(a)(1)(A)-(C).

8 146. At all relevant times, on information and belief, Defendants failed, on a
9 company-wide basis, to provide written notice to Plaintiff and class members that lists the
10 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
11 to provide Plaintiff and class members with written notice of basic information regarding their
12 employment with Defendants is in violation of California Labor Code section 2810.5.

13 147. As a result of the violations of California law herein described, Defendants
14 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
15 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
16 herein.

17 148. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
18 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
19 Defendants during a period that commences four years prior to the filing of this complaint; a
20 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
21 class members; and an award of attorneys' fees pursuant to California Code of Civil
22 Procedure section 1021.5 and other applicable laws; and an award of costs.

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

25 **Unfair Business Practices**

26 **(Against all Defendants)**

27 149. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 150. Defendants are “persons” as defined by California Business & Professions
2 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
3 and/or associations.

4 151. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
5 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
6 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
7 seeks to enforce important rights affecting the public interest within the meaning of Code of
8 Civil Procedure section 1021.5.

9 152. Defendants’ activities, namely Defendants’ company-wide practice and/or
10 policy of not paying Plaintiff and class members all meal and rest period premiums due to
11 them under Labor Code section 226.7, deprived Plaintiff and class members of the
12 compensation guarantee and enhanced enforcement implemented by section 226.7. The
13 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
14 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
15 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
16 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
17 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
18 unfair business practice in violation of California Business & Professions Code sections
19 17200, *et seq.* (*Id.*)

20 153. A violation of California Business & Professions Code sections 17200, *et seq.*
21 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
22 and practices have violated the spirit of California’s meal and rest period laws and constitute
23 acts against the public policy behind these laws.

24 154. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
26 benefits implemented by section 226.7 withheld and retained by Defendants during a period
27 that commences four years prior to the filing of this complaint; a permanent injunction
28 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to

1 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
7 against Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
9 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
10 reserves the right to amend his prayer for relief to seek a different amount.

11 **Class Certification**

- 12 2. That this case be certified as a class action;
13 3. That Plaintiff be appointed as the representative of the Class and Subclass;
14 4. That counsel for Plaintiff be appointed as class counsel.

15 **As to the First Cause of Action**

16 5. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
18 pay all overtime wages due to Plaintiff and class members;

19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due, or as otherwise provided by law;

23 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a); and

25 9. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Second Cause of Action**

28 10. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
2 Order by willfully failing to pay minimum wages to Plaintiff and class members;

3 11. For general unpaid wages and such general and special damages as may be
4 appropriate;

5 12. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due, or as otherwise provided by law;

7 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a);

9 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

10 15. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Third Cause of Action**

13 16. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
15 willfully failing to provide all meal periods to Plaintiff and class members;

16 17. That the Court make an award to the Plaintiff and class members of one (1)
17 hour of pay at each employee's regular rate of pay for each workday that a meal period was
18 not provided;

19 18. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 19. For premiums pursuant to California Labor Code section 226.7(c);

22 20. For pre-judgment interest on any unpaid meal period premiums from the date
23 such amounts were due, or as otherwise provided by law;

24 21. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 22. For such other and further relief as the Court may deem equitable and
27 appropriate.

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1 **As to the Fourth Cause of Action**

2 23. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
4 failing to authorize and permit Plaintiff and class members to take all rest periods;

5 24. That the Court make an award to the Plaintiff and class members of one (1) hour
6 of pay at each employee's regular rate of pay for each workday that a rest period was not
7 authorized and permitted;

8 25. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 26. For premiums pursuant to California Labor Code section 226.7(c);

11 27. For pre-judgment interest on any unpaid rest period premiums from the date
12 such amounts were due, or as otherwise provided by law;

13 28. For attorneys' fees pursuant to California Code of Civil Procedure section
14 1021.5, or as otherwise provided by law; and

15 29. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Fifth Cause of Action**

18 30. That the Court declare, adjudge and decree that Defendants violated the
19 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
20 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
21 itemized wage statements thereto;

22 31. For all actual, consequential, and incidental losses and damages, according to
23 proof;

24 32. For injunctive relief pursuant to California Labor Code section 226(h);

25 33. For statutory penalties pursuant to California Labor Code section 226(e);

26 34. For attorneys' fees and costs pursuant to California Labor Code section
27 226(e)(1); and

28 35. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Sixth Cause of Action**

3 36. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
5 and/or meal and rest period premiums owed at the time of termination of the employment of
6 Plaintiff and other terminated class members;

7 37. For all actual, consequential and incidental losses and damages, according to
8 proof;

9 38. For waiting time penalties according to proof pursuant to California Labor
10 Code section 203 for all employees who have left Defendants' employ;

11 39. For pre-judgment interest on any unpaid wages from the date such amounts
12 were due, or as otherwise provided by law;

13 40. For attorneys' fees pursuant to California Code of Civil Procedure section
14 1021.5, or as otherwise provided by law; and

15 41. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Seventh Cause of Action**

18 42. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
20 overtime wages, minimum wages, and/or meal and rest period premiums pay during their
21 employment;

22 43. For all actual, consequential and incidental losses and damages, according to
23 proof;

24 44. For statutory penalties according to proof pursuant to California Labor Code
25 section 210;

26 45. For pre-judgment interest on any unpaid wages from the date such amounts
27 were due, or as otherwise provided by law;

28 46. For attorneys' fees pursuant to California Code of Civil Procedure section

1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during

employment); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime and/or meal period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiff and all class members and

1 prejudgment interest from the day such amounts were due and payable;

2 61. For the appointment of a receiver to receive, manage, and distribute any and all
3 funds disgorged from Defendants and determined to have been wrongfully acquired by
4 Defendants as a result of violations of California Business & Professions Code sections
5 17200, *et seq.*;

6 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Code of Civil Procedure section 1021.5; and

8 63. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Eleventh Cause of Action**

11 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
12 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
13 an unfair business practice in violation of California Business and Professions Code sections
14 17200, *et seq.*;

15 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
16 from Plaintiff and class members and prejudgment interest from the day such amounts were
17 due and payable;

18 66. For the appointment of a receiver to receive, manage, and distribute any and all
19 funds disgorged from Defendants and determined to have been wrongfully acquired by
20 Defendants as a result of violations of California Business & Professions Code sections
21 17200, *et seq.*;

22 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5;

24 68. For pre-judgment and post-judgment interest as provided by law; and

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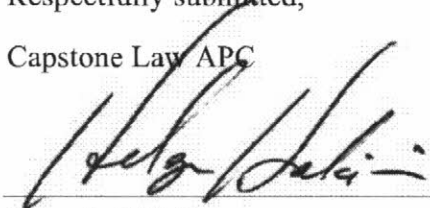
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1 69. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: January 13, 2023

Respectfully submitted,

Capstone Law APC

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7 By: 

Orlando Villalba

Helga Hakimi

Roxanna Tabatabaee pour

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10 Attorneys for Plaintiff Liam Moriarty
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EXHIBIT “1”



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November 8, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Liam Moriarty v. Tahoe Club Employee Company, et al.*

Dear PAGA Administrator:

This office represents Liam Moriarty in connection with his claims under the California Labor Code. Mr. Moriarty was an employee of TAHOE CLUB EMPLOYEE COMPANY; TAHOE CLUB COMPANY, LLC; and/or CC NORTHSTAR HOLDINGS, LLC. For the purpose of this letter, Mr. Moriarty collectively refers to these entities as "TAHOE CLUB."

The employers may be contacted directly at the addresses below:

TAHOE CLUB EMPLOYEE COMPANY
13051 FAIRWAY DRIVE
TRUCKEE, CA 96161

TAHOE CLUB COMPANY, LLC
13051 FAIRWAY DRIVE
TRUCKEE, CA 96161

CC NORTHSTAR HOLDINGS, LLC
40165 TRUCKEE AIRPORT ROAD, SUITE 301B
TRUCKEE, CA 96161

Mr. Moriarty intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Moriarty seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TAHOE CLUB as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TAHOE CLUB employed Mr. Moriarty as an hourly paid, non-exempt seasonal employee from approximately May 2017 to July 2022. Mr. Moriarty worked for TAHOE CLUB as a Guest Assistant and Golf Guest Services Professional at its location in Truckee, California. During his employment, Mr. Moriarty typically worked eight (8) or more hours per day and five (5) days per week. Mr. Moriarty was compensated approximately \$16.00 per hour at the time his employment

ended with TAHOE CLUB. His job duties included, without limitation, corralling golf carts, assisting golfers with bags, cleaning golf carts, and maintaining the driving range.

TAHOE CLUB committed one or more of the following Labor Code violations against Mr. Moriarty the facts and theories of which follow, making his an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

TAHOE CLUB’s Company-Wide and Uniform Payroll and HR Practices

TAHOE CLUB EMPLOYEE COMPANY and TAHOE CLUB COMPANY, LLC are a Colorado corporation and a Delaware limited liability company, respectively. CC NORTHSTAR HOLDINGS, LLC is a California limited liability company. Together, they own and operate Tahoe Mountain Club, a year-round social club that manages two golf courses, four restaurants, a ski lodge, wedding venues, valet services, lounges, as well as swim, tennis, and fitness centers. Upon information and belief, TAHOE CLUB maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Truckee, California, for all non-exempt, hourly paid employees working for TAHOE CLUB in California, including Mr. Moriarty and other aggrieved employees. At all relevant times, TAHOE CLUB issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Moriarty and other aggrieved employees, regardless of its location or position.

Upon information and belief, TAHOE CLUB maintains a centralized Payroll department at its corporate headquarters in Truckee, California, which processes payroll for all non-exempt, hourly paid employees working for TAHOE CLUB in California, including Mr. Moriarty and other aggrieved employees. Further, TAHOE CLUB issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Moriarty and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, TAHOE CLUB utilized the same methods and formulas when calculating wages due to Mr. Moriarty and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

¹ These facts, theories, and claims are based on Mr. Moriarty’s experience and counsel’s review of those records currently available relating to Mr. Moriarty’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Moriarty reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TAHOE CLUB willfully failed to pay all overtime wages owed to Mr. Moriarty and other aggrieved employees. During the relevant time period, Mr. Moriarty and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, TAHOE CLUB had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Mr. Moriarty and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Moriarty and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Moriarty was often required to continue performing his duties during his unpaid meal periods. Additionally, TAHOE CLUB, on a company-wide basis, had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Moriarty and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Moriarty's and other aggrieved employees' meal periods were missed or interrupted to complete their assigned workloads. TAHOE CLUB did not pay Mr. Moriarty and other aggrieved employees or the time they continued to perform tasks during meal periods.

TAHOE CLUB also had, and continues to have, a policy and/or practice of requiring that Mr. Moriarty and other aggrieved employees carry and respond to a company-issued radio at all times. As a result, TAHOE CLUB's management contacted Mr. Moriarty and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. For example, Mr. Moriarty was required to spend time during his meal periods answering radio calls and responding to management's requests that he return to work and assist customers. TAHOE CLUB knew or should have known that Mr. Moriarty and other aggrieved employees were performing work while off-the-clock in order to meet TAHOE CLUB's expectations, but failed to compensate them for this time.

Furthermore, on information and belief, because TAHOE CLUB frowned upon employees accruing meal period penalties, TAHOE CLUB's management pressured Mr. Moriarty and other aggrieved employees to clock out for meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by TAHOE CLUB. For example, Mr. Moriarty was pressured by TAHOE CLUB's managers to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period. Thus, TAHOE CLUB did not record all hours worked during meal periods, and Mr. Moriarty and other aggrieved employees performed work during meal periods for which they were not paid.

TAHOE CLUB knew or should have known that as a result of these company-wide practices and/or policies, Mr. Moriarty and other aggrieved employees were performing assigned duties off-the-clock during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Moriarty and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Moriarty and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, TAHOE CLUB did not pay Mr. Moriarty and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TAHOE CLUB paid Mr. Moriarty and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TAHOE CLUB failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TAHOE CLUB failed to pay all overtime wages by paying a lower overtime rate than required.

For example, TAHOE CLUB paid Mr. Moriarty and other aggrieved employees mandatory service charges which were listed on Mr. Moriarty's and other aggrieved employees' wage statements as "Golf Svs Chg." During pay periods that Mr. Moriarty and other aggrieved employees were paid overtime wages, TAHOE CLUB did not incorporate the mandatory service charges into Mr. Moriarty's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, TAHOE CLUB paid Mr. Moriarty and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. TAHOE CLUB's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Moriarty and other aggrieved employees on a company-wide basis.

TAHOE CLUB's failure to pay Mr. Moriarty and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 10-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11100(2)(H) (defining "Hours Worked").

As set forth above, due to TAHOE CLUB's policies and/or practices of understaffing its locations while assigning heavy workloads, failing to schedule meal periods, and requirement that employees to carry and use their company-issued radios to communicate with management during unpaid meal periods, Mr. Moriarty and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, TAHOE CLUB's management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, TAHOE CLUB systematically failed to pay Mr. Moriarty and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, TAHOE CLUB did not pay at least minimum wages for all hours worked by Mr. Moriarty and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, TAHOE CLUB did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, TAHOE CLUB regularly failed to pay at least minimum wages to Mr. Moriarty and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, 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. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, 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.

First, during the relevant time period, as stated, TAHOE CLUB had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, and failing to schedule meal periods, which has resulted in a lack of meal period coverage. Moreover, as stated, due to TAHOE CLUB's company-wide policy and/or practice of requiring that Mr. Moriarty and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods, TAHOE CLUB's management contacted Mr. Moriarty and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters.

As a result, Mr. Moriarty and other aggrieved employees had to work through all or part of their meal periods and/or had their meal periods interrupted, which prevented Mr. Moriarty and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, because of TAHOE CLUB's policy and/or practice of understaffing while assigning heavy workloads, Mr. Moriarty missed his meal periods 2-3 times per week, took late meal periods 2-3 times per week, and had nearly every meal period interrupted due to radio communications from his supervisors.

Second, as stated, on information and belief, because TAHOE CLUB frowned upon employees accruing meal period penalties, TAHOE CLUB's management pressured Mr. Moriarty and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that TAHOE CLUB would otherwise owe. For example, at TAHOE CLUB's management's direction, Mr. Moriarty would log that his meal period was taken within the first five (5) hours of his shift, even when he took his meal periods in his seventh hour of work or missed his meal periods entirely.

Third, TAHOE CLUB did not provide Mr. Moriarty and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Moriarty worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Moriarty and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, TAHOE CLUB knew or should have known that, as a result of these policies, Mr. Moriarty and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. TAHOE CLUB further knew or should have known that TAHOE CLUB did not pay Mr. Moriarty and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, TAHOE CLUB engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Moriarty and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that TAHOE CLUB did pay Mr. Moriarty and other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, TAHOE CLUB did not pay Mr. Moriarty and other aggrieved employees at the correct rate of pay for premiums because TAHOE CLUB systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TAHOE CLUB failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Moriarty and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, TAHOE CLUB regularly failed to authorize and permit Mr. Moriarty and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TAHOE CLUB’s company-wide practices, including understaffing, assigning heavy workloads, and requiring employees to respond to company issued radios at all times, prevented Mr. Moriarty and other aggrieved employees from being relieved of all duty to take rest periods. TAHOE CLUB also failed to schedule rest periods, which, coupled with TAHOE CLUB’s failure to provide adequate rest period coverage, further led to Mr. Moriarty and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, TAHOE CLUB maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Moriarty and other aggrieved employees remain on TAHOE CLUB’s premises during their rest periods. Because Mr. Moriarty and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, TAHOE CLUB effectively maintained control over Mr. Moriarty and other aggrieved employees during rest periods.

As a result of TAHOE CLUB’s practices and policies, Mr. Moriarty and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Moriarty had to forego at least one rest period per shift, and often had to forego his rest periods altogether because of the heavy workload and TAHOE CLUB’s failure to schedule rest periods for employees.

TAHOE CLUB also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Moriarty and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TAHOE CLUB did pay Mr. Moriarty and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TAHOE CLUB did not pay Mr. Moriarty and other aggrieved employees at the correct rate of pay for premiums because TAHOE CLUB failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TAHOE CLUB failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Moriarty and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TAHOE CLUB has not provided Mr. Moriarty and other aggrieved employees with properly itemized wage statements. Labor Code section 226(c) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TAHOE CLUB has knowingly and intentionally provided Mr. Moriarty and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TAHOE CLUB issued uniform wage statements to Mr. Moriarty and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TAHOE CLUB violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because TAHOE CLUB did not record the time Mr. Moriarty and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), TAHOE CLUB did not list the correct amount of gross wages and net wages earned by Mr. Moriarty and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TAHOE CLUB failed to accurately list the total number of hours worked by Mr. Moriarty and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because TAHOE CLUB did not calculate Mr. Moriarty's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, TAHOE CLUB did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). TAHOE CLUB also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TAHOE CLUB willfully failed to maintain accurate payroll records for Mr. Moriarty and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, TAHOE CLUB failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Moriarty and other aggrieved employees, in violation of section 1198. As stated, TAHOE CLUB engaged in a company-wide practice and/or policy of falsifying Mr. Moriarty’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Moriarty and other aggrieved employees. Furthermore, in light of TAHOE CLUB’s failure to provide Mr. Moriarty and other aggrieved employees with second 30-minute meal periods to which they were entitled, TAHOE CLUB kept no records of meal start and end times for second meal periods.

Because TAHOE CLUB failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Moriarty and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Moriarty and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TAHOE CLUB failed to pay Mr. Moriarty and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within any time period specified by California Labor Code section 204.

Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

TAHOE CLUB willfully failed to pay Mr. Moriarty and other aggrieved employees who are no longer employed by TAHOE CLUB all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving TAHOE CLUB's employ.

Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11100(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The

inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

TAHOE CLUB's facilities are generally similar in their layout and design and there was, and continues to be, space behind greeting podiums and host stands to allow for the presence and use of a seat or stool by Mr. Moriarty and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. TAHOE CLUB could provide Mr. Moriarty and other aggrieved employees with a seat or stool at its greeting podiums and host stands, but instead denies employees seating and forces other Mr. Moriarty and other aggrieved employees to stand throughout the day.

Mr. Moriarty and other aggrieved employees spent a substantial portion of their day behind or at these greeting podiums and/or host stands. The nature of the work of an employee performing greeting, attending, and/or host duties at greeting podiums and/or host stands can reasonably be accomplished from a seated position. However, as set forth herein, TAHOE CLUB systematically, and on a company-wide basis, does not provide seats or stools at or near the greeting podiums and host stands, forcing Mr. Moriarty and other aggrieved employees to stand throughout their work shifts.

TAHOE CLUB violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(14)(A) because Mr. Moriarty and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. TAHOE CLUB's management did not inform Mr. Moriarty and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of TAHOE CLUB's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Moriarty and other aggrieved employees were forced to stand during shifts and denied seats. TAHOE CLUB's failure to provide suitable seating to Mr. Moriarty and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 10-2001, subdivision 14(A).

Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TAHOE CLUB into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11100(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity

to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or he must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

TAHOE CLUB’s facilities are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Moriarty and other aggrieved employees during lulls in operation. TAHOE CLUB could provide Mr. Moriarty and other aggrieved employees with a seat or stool at in its work areas, but instead denies employees seating and forces other Mr. Moriarty and other aggrieved employees to stand throughout the day.

TAHOE CLUB did not provide Mr. Moriarty and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Moriarty and other aggrieved employees engaged in duties in which the nature of the work required standing, TAHOE CLUB denied them the use of seats nearby during lulls in their work duties. Moreover, TAHOE CLUB did not inform Mr. Moriarty and other aggrieved employees of their rights to a seat or stool under California law.

As a result of TAHOE CLUB’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Moriarty and other aggrieved employees were forced to stand during shifts and denied seats. TAHOE CLUB’s failure to provide suitable seating to Mr. Moriarty and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 10-2001, subdivision 14(B).

Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring TAHOE CLUB into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 10-2001 provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

During the relevant time period, TAHOE CLUB required Mr. Moriarty and other aggrieved employees to wear uniforms bearing the “Tahoe Mountain Club” company logo, including a polo

shirt and a hat. However, TAHOE CLUB did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, TAHOE CLUB only provided Mr. Moriarty with three polo shirts and one hat at the beginning of each season. Because TAHOE CLUB failed to provide Mr. Moriarty and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts, Mr. Moriarty and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Thus, TAHOE CLUB failed to maintain uniforms they required Mr. Moriarty and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

TAHOE CLUB could have provided Mr. Moriarty and other aggrieved employees with an adequate number of uniform items or access to laundering services. Or, TAHOE CLUB could have reimbursed employees for laundering expenses or provided a uniform maintenance allowance. Instead, TAHOE CLUB passed these operating costs off onto Mr. Moriarty and other aggrieved employees.

Thus, TAHOE CLUB had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, TAHOE CLUB failed, on a company-wide basis, to provide written notice to Mr. Moriarty and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). TAHOE CLUB's failure to provide Mr. Moriarty and other aggrieved employees with written notice of basic information regarding their employment with TAHOE CLUB is in violation of Labor Code section 2810.5.

Mr. Moriarty and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” TAHOE CLUB, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Moriarty’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Moriarty seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Moriarty, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against TAHOE CLUB for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Moriarty seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

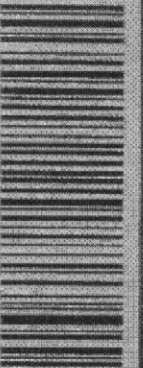


Sairah Budhwani

Copy: TAHOE CLUB EMPLOYEE COMPANY (via U.S. Certified Mail); TAHOE CLUB COMPANY, LLC (via U.S. Certified Mail); CC NORTHSTAR HOLDINGS, LLC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067

CERTIFIED MAIL



7022 2410 0000 2406 3775

TAHOE CLUB EMPLOYEE COMPANY
13051 FAIRWAY DRIVE
TRUCKEE, CA 96161

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TAHOE CLUB EMPLOYEE COMPANY
13051 FAIRWAY DRIVE
TRUCKEE, CA 96161



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Service Type

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| ☐ Certified Mail Restricted Delivery | ☐ Registered Mail Restricted Delivery |
| ☐ Collect on Delivery | ☐ Return Receipt for Merchandise |
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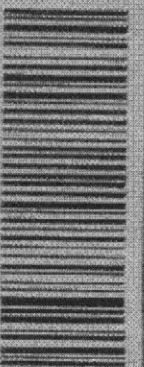
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- ☐ Signature Confirmation™
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TAHOE CLUB EMPLOYEE COMPANY
13051 FAIRWAY DRIVE
TRUCKEE, CA 96161

7022 2410 0000 2406 3775

Capstone Law, APC
 1875 Century Park, East, 1000
 Los Angeles, CA 90067



7022 2410 0000 2406 3782

CERTIFIED MAIL

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TAHOE CLUB COMPANY, LLC
 13051 FAIRWAY DRIVE
 TRUCKEE, CA 96161

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ X
 1. Received by (Printed Name) _____
 C. Date of Delivery _____

1. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No



9590 9402 1512 5362 2478 91

Service Type

☐ Adult Signature
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☐ Certified Mail
☐ Certified Mail Restricted Delivery
☐ Certified Mail Return Receipt
☐ Certified Mail Return Receipt Restricted Delivery
☐ Certified Mail Return Receipt Restricted Delivery
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☐ Registered Mail Return Receipt Restricted Delivery
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 importance of the *Journal of Management Education* in
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 journal's role in providing a platform for research,
 theory, and practice in the management education field.

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TRUCKEE, CA 96161

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B. Recovered by (Printed Name)	C. Date of Recovery
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TAHOE CLUB COMPANY, LLC
 13051 FAIRWAY DRIVE
 TRUCKEE, CA 96161



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2. Article Number (Transfer from service label)

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

B. Scroggs

C. Date of Delivery

11/2/22

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

Service Type

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☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

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☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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CC NORTHSTAR HOLDINGS, LLC
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 TRUCKEE, CA 96161



9590 9402 1512 5362 2478 84

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3799

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
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☒ Certified Mail®
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☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail Restricted Delivery (0)

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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TAHOE CLUB EMPLOYEE COMPANY
 13051 FAIRWAY DRIVE
 TRUCKEE, CA 96161



9590 9402 1512 5362 2479 07

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3775

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent☐ Addressee

B. Received by (Printed Name)

B. Scroggs

C. Date of Delivery

11/2/22

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

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☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 13, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Gregory M. Saylin
gmsaylin@hollandhart.com
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Telephone: (801) 799-5800
Facsimile: (801) 799-5700

Attorney's for Defendants:
TAHOE CLUB EMPLOYEE COMPANY, a
Colorado corporation; TAHOE CLUB
COMPANY, LLC, a Delaware limited
liability company; CC NORTHSTAR
HOLDINGS, LLC, a California limited
liability company;

S. Jordan Walsh
sjwalsh@hollandhart.com
Martha Hauser
mhauser@hollandhart.com
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Telephone: (775) 327-3131
Facsimile: (775) 786-6179

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

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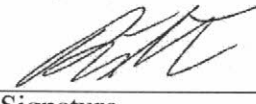
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1 [] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
2 collection and processing correspondence for overnight delivery. Under that practice,
3 overnight packages are enclosed in a sealed envelope with a packing slip attached
4 thereto fully prepaid. The packages are picked up by the carrier at our offices or
5 delivered by our office to a designated collection site.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Executed on **January 13, 2023** at Los Angeles, California.

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Riley McIntire
Type/Print Name


Signature