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JUSTINO CHAVEZ on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

JUSTINO CHAVEZ, an individual, on behalf of himself, all putative class members, aggrieved employees, and the State of California as a Private Attorneys' General, Plaintiff, vs. LABAR GOLF RENOVATIONS, LLC, a New Jersey limited liability company; and DOES 1-50, inclusive, Defendant.	Case No.: CVRI2305540 **CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:** **1. Failure to Pay for All Hours Worked, Including Overtime Hours Worked** **2. Failure to Provide Timely Meal Breaks** **3. Failure to Provide Rest Periods, Cool-Down Rest Periods and Safe and Healthful Place of Employment** **4. Failure to Pay Wages Due Upon Termination** **5. Paystub and Record Keeping Violation** **6. Unlawful Business Practices Bus & Prof. Code §17200** **7. Private Attorneys General Act Penalties §2698 et seq** **JURY TRIAL DEMANDED**

Plaintiff JUSTINO CHAVEZ, individually, and on behalf of all others similarly situated, all Aggrieved Employees, and as a Private Attorney General for the State of California (collectively "Plaintiff"), alleges as follows:

NATURE OF THE ACTION

1. This is an employment class and PAGA representative action on behalf of over 50 hourly, non-exempt employees against their employer for violations of numerous wage and hour laws. Plaintiff employees bring this employment class and representative action complaint on behalf of themselves**,** and all others similarly situated against LABAR GOLF RENOVATIONS, LLC and DOES 1-50, inclusive, (hereafter collectively "Defendant" or "Defendant").

2. Defendant is a golf construction and renovation company. Plaintiff worked for Defendant as an hourly, non-exempt employee during the statutory period.

3. As described further below, Defendant has violated the California Labor Code by (1) failing to pay wages, including overtime wages; (2) failing to provide timely meal breaks; (3) failing to rest periods, cool-down rest periods and safe and healthful place of employment; (4) failing to pay wages due upon termination; (5) failing to provide accurate itemized wage statements; and (6) unlawful and unfair business practices (Bus. & Prof. Code §17200, et. seq.). Plaintiff further alleges that Defendant is liable for civil penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 et seq.

4. The class claims in this action are brought pursuant to Code of Civil Procedure ("CCP") §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and reasonable attorneys' fees and costs. Pursuant to the class and representative action procedures provided for under California law, Plaintiff, on behalf of themselves and proposed Class Members (also referred to as "Class"), and Aggrieved Employees, also seeks injunctive relief and restitution of all benefits Defendant has received from their unlawful actions as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 et. seq., to the Labor and Workforce and Development Agency ("LWDA") and now brings this Complaint, including claims for civil

penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 et seq. Attorney General Act ("PAGA"), Labor Code §2698 et seq.

5. The "Class Period" is designated as the four-year period prior to the filing of this Complaint through the date of final disposition of this action. From the start of the Class Period through the present, Defendant has had a policy and/or practice of among other violations: rounding employee timecard entries, frequently failing to provide meal and rest breaks, frequently issuing inaccurate wage statements, ignoring and violating California wage and hour laws in their business as more fully set forth below.

6. The "PAGA Period" as defined herein commences one year prior to the date of filing the PAGA Notice letter with the LWDA.

7. Defendant has treated all persons employed in California in such a way as to violate California's laws governing conditions of employment and payment of wages owed. Plaintiff asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the Class Members all wages owed, including overtime wages and meal and rest break penalty wages. Defendant has violated numerous Labor Code provisions, as set forth herein. Class Members are owed their back pay, plus interest and/or premiums and penalties under Business and Professions Code section 17203 to compensate Class Members and Class Members for the delay in receiving wages due.

8. Defendant, by and through their actions, has engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

9. Plaintiff JUSTINO CHAVEZ is an individual who resides in California and was employed by Defendant during the statutory period.

10. Defendant LABAR GOLF RENOVATIONS, LLC is a New Jersey limited liability company doing business in California with the capacity to sue and to be sued, and doing business in this county, State of California.

11. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are

ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendant is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff, Class Members, and Aggrieved Employees herein alleged were proximately caused by such Doe Defendants.

12. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

13. Venue is proper in this judicial district because Defendant conducts business in this County and Defendant has legal obligations to Plaintiff, Aggrieved Employees and many of the Class Members in this case that arose in this county.

14. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars ($25,000).

15. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

16. During the Class Period and PAGA Period, Defendant committed various violations of the California Labor Code, the CCR, the UCL and IWC Wage Order, as alleged below in more

detail. Defendant enforces multiple policies that violate state law which are intended to increase its own profits to the detriment of its workers.

17. Defendant employed, upon information and belief, more than 50 current and former non-exempt employees (hereafter "Class Members" or "Class") during the Class Period.

18. Defendant failed to pay for all hours worked; timely provide and/or authorize meal breaks; timely provide and/or authorize rest breaks and cool down periods; provide a safe and healthful place of employment, pay wages due upon termination and provide timely, accurate wage statements and maintain required payroll records. These practices also constitute unlawful and unfair business practices. These policies and practices have deprived Plaintiff and Class Members, and Aggrieved Employees of payment for all hours worked, and further damages, as set forth below, and render Defendant liable for damages, including penalties under PAGA.

19. <u>Failure to pay wages including overtime wages</u>. Defendant has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

A. <u>Pre and Post Shift Work and Time-Shaving/Rounding.</u> Plaintiff, class members and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Defendant's control but not compensated for their time. Employees work 10-12 hour days outside, and Defendant rounds timecard entries to ensure that employees are not paid for all hours worked, and frequently requires employees to engage in required work tasks before clocking in and after clocking out. When it comes to time shaving and rounding, the California Supreme Court has rejected the de minimis argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th

829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Defendant is neither fair nor neutral, as it consistently shaved time from Plaintiff, class members and aggrieved employees' hours worked, resulting in a failure to compensate Plaintiff, class members and aggrieved employees for all hours and overtime hours worked.

B. <u>Failure to Pay Overtime at Lawful Rate.</u> Defendant pays overtime after employees have worked 40 hours in one week. However, California law requires that employees also be paid overtime after 8 hours in a day. Defendant also failed to pay employees double-time at the lawful rate when it required employees to work excessively long shifts. As a result of these practices, Defendant has violated Cal. Labor Code §§218, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders paragraph(3)(A)(1) for failure to pay overtime. Defendant is liable for civil penalties pursuant to Cal. Labor Code §558and 2698 *et seq*.

20. <u>Meal periods.</u> Defendant failed to maintain a compliant meal period policy and practice. Defendant failed to provide all of its hourly employees with their right to take a timely, off-duty unpaid 30-minute meal period. Plaintiff claims that although he frequently worked 10-12 hour shifts, he was never provided with a second meal period. Additionally, Plaintiff and his coworkers received late meal periods. Generally, Defendant would require employees to combine their meal and rest periods so that they would take approximately 1 hour of unpaid time and zero rest breaks. However, even these late meal breaks were often interrupted. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Defendant's policy violates a Wage Order, Defendant is liable under Labor Code §1198. As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

21. Rest Breaks. Defendant has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

A. Cool-Down Rest Periods. Even on summer days when temperatures in Coachella Valley rose well above one hundred (100) degrees Fahrenheit, Defendant discouraged employees from taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working for employers that maintain "outdoor places of employment" "shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating." Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

B. Potable Drinking Water. Rest breaks did not comply with state laws as required by Labor Code §226.7 because employee were denied sufficient potable water. California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge."8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Plaintiff, class members and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working outdoors throughout the duration of the shift. Pursuant to §2441, "Any violation of this section is punishable for each offense by a fine of not less than fifty dollars ($50), nor more than two hundred dollars ($200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment." . Pursuant to Cal. Labor Code §6712, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty…of not less than seven hundred fifty dollars ($750) for each violation."

Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

C. Adequate Shade. Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires employers to allow access to shade. The regulations define "shade" as "blockage of direct sunlight." Defendant failed to provide Plaintiff, class members and aggrieved employees, who worked outdoors, with adequate shade. Labor Code sections 6300, 6310 and 6400, *et seq*. requires all employers to provide a safe and secure workplace. Because Defendant did not provide shade required by 8 CCR 3395 at their "outdoor places of employment," Plaintiff and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health. Because shade is required, failure to provide adequate shade results in insufficient recovery periods. Damages and PAGA penalties for violation of Labor Code §226.7 are extensive.

D. Legally Compliant Bathrooms. Bathrooms were ½ mile away and clearly inaccessible at any time except during employees' unpaid meal break. Breaks did not comply with state laws as required by Labor Code §226.7 because workers were not provided with clean bathrooms and sufficient handwashing facilities and Plaintiff, class members and aggrieved employees had to deal with inadequate bathroom conditions due to Defendant's simple failure to provide basic human necessities. Cal. Code Regs. tit. 8, § 3457 requires that "[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years." Labor Code §6712 requires toilets to be "serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance." Moreover, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty…of not less than seven hundred fifty dollars ($750) for each violation." Labor Code §6712. The public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, *et seq.* requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, Defendant failed to do so in failing to provide bathrooms, water, and shade

22. Failure to Pay Wages Due Upon Termination. Defendant failed to pay all wages due upon termination. Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202. Plaintiff did not receive his final wages until numerous days after he was terminated although he was required to be paid the final wages on the day of termination.

A. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay Plaintiff and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

23. Wage statement and record keeping violations. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff, class members and aggrieved employees in accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiff, class members and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, expense reimbursements, and total hour worked. Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the accurate total hours worked and the amount of wages and penalty payments to which they are and were entitled. Defendant knowingly and intentionally failed to itemize the accurate gross wages earned, net wages earned, and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

24. Unlawful business practices. Based upon the above allegations, Defendant engaged in unfair competition.

CALIFORNIA CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action on behalf of himself, and all other persons similarly situated, to recover from Defendant for failure to comply with California wage and hour laws, and for claims under Business and Professions Code § 17200.

26. This action has been brought and may properly be maintained as a class action pursuant to the provisions of Code of Civil Procedure § 382 and/or a representative action under Business & Professions Code §§17200 et seq. and Labor Code §2699 because the proposed class is ascertainable and there is a well-defined community of interest. Plaintiff, Class Members and aggrieved employees are among in excess of 100 employees with like job titles, duties, and hourly wages, who have been similarly injured by Defendant's uniform, unlawful conduct.

27. The "Relevant Time Period" or proposed "Class Period" as defined herein commences four years prior to the date of filing this Complaint.

28. Plaintiff brings this action on their behalf and as a class action under Cal. Code of Civil Procedure §382 on behalf of the following defined groups:

Proposed Class:

> “All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations.”

Proposed Sub-classes:

A. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shift in excess of five (5) hours.

B. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of six (6) hours.

C. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of eight (8) hours.

D. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of three and one-half hours (3 ½), but less than or equal to six (6) hours.

E. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

F. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who separated their employment from Defendant.

G. All persons who are employed or have been employed by Defendant in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who received pay for one or more pay periods.

29. This action is brought, and may properly be maintained, as a class action under CCP §382 because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses (collectively "Class") are easily ascertainable.

A. Numerosity: The Proposed Class is so numerous that joinder of all members is impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant time period, Defendant employed over 50 putative Class Members who are geographically dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only available method for the fair and efficient adjudication of this controversy. Membership in the Proposed Class can be easily ascertained by an examination and analysis of employee and payroll records, among other records within Defendant's possession and control.

B. Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff, like others similarly situated, was subjected to Defendant's common, unlawful policies, practices, and procedures described above. The Plaintiff's positions at the company was typical of those of other Class Members. Plaintiff's claims are typical of the claims of each Class Member because each have sustained damages arising out of and caused by Defendant's common course of conduct, as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the Class.

C. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in complex class actions and California labor and employment litigation.

D. Commonality: Common questions of law and fact exist, including but not limited to the following:

i. Whether Defendant violated wage and hour laws by failing to pay employees for all hours worked;

ii. Whether Defendant violated wage and hour laws by failure to always properly calculate wages and overtime for shifts;

iii. Whether Defendant violated wage and hour laws in failing to make meal breaks available;

iv. Whether Defendant violated wage and hour laws by failing to make rest periods available;

v. Whether Defendant violated wage and hour laws by failing to make cool-down rest periods available;

vi. Whether Defendant violated wage and hour laws by failing to provide safe and healthful working conditions;

vii. Whether Defendant violated wage and hour laws by failing to pay due wages upon termination;

viii. Whether Defendant failure to pay the Class Members all wages owed, including overtime, violated Business & Professions Code § 17200;

ix. Whether Defendant failure to provide the Class Members rest periods violated Business & Professions Code § 17200;

x. Whether Defendant failed to provide accurate wage statements to Plaintiff and the Class as a consequence of the above listed wrongful acts;

xi. Whether Defendant failed to provide Class Members with correct final wage statements;

xii. Whether Defendant failed to pay wages, including overtime and final wages, to terminated or quitting employees in the Class on a timely basis;

xiii. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass member;

xiv. Whether Defendant's actions violated Business & Professions Code § 17200;

xv. Whether the Class Members are entitled to various penalties from Defendant including, but not limited to, waiting-time penalties under Labor Code §§ 201, 202, 203,204, 226 and 558;

xvi. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;

xvii. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass member?

E. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low wage-earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

30. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendant's corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ

competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

31. Plaintiff requests, pursuant to Rule 1857(a)(l) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The names and address of the Class and Subclass Members are available from Defendant.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES INCLUDING OVERTIME WAGES

Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 et seq., Wage Order

(Plaintiff Against All Defendant)

32. Plaintiff reasserts and re-alleges paragraphs 1 through 33, inclusive, as if fully set forth and incorporate said paragraphs herein by reference.

33. The Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so." When employees like Plaintiff and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Defendant has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including shaving time from their timecards due to employer rounding.

34. Pre and Post Shift Work and Time-Shaving/Rounding. Plaintiff, class members and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Defendant's control but not compensated for their time. Employees work 10-12 hour days outside, and Defendant rounds timecard entries to ensure that employees are not paid for all hours worked, and frequently requires employees to engage in required work tasks before clocking in and after clocking out. When it comes to time shaving and rounding, the California Supreme Court has rejected the de minimis argument frequently echoed by employers,

confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Defendant is neither fair nor neutral, as it consistently shaved time from Plaintiff, class members and aggrieved employees’ hours worked, resulting in a failure to compensate Plaintiff, class members and aggrieved employees for all hours and overtime hours worked.

35. Failure to Pay Overtime at Lawful Rate. Defendant pays overtime after employees have worked 40 hours in one week. However, California law requires that employees also be paid overtime after 8 hours in a day. Defendant also failed to pay employees double-time at the lawful rate when it required employees to work excessively long shifts. As a result of these practices, Defendant has violated Cal. Labor Code §§218, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders paragraph(3)(A)(1) for failure to pay overtime. Defendant is liable for civil penalties pursuant to Cal. Labor Code §558and 2698 *et seq.*

36. Plaintiff further requests an award of attorneys' fees pursuant to Labor Code §§ 218.5 and 1194 and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE TIMELY MEAL BREAKS

Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Orders

(Plaintiff Against All Defendant)

37. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

38. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes…” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal… period mandated by an applicable order of the Industrial Welfare

Commission." The Wage Order provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

39. In this case, Plaintiff claims that although he frequently worked 10-12 hour shifts, he was never provided with a second meal period. Additionally, Plaintiff and his coworkers received late meal periods. Generally, Defendant would require employees to combine their meal and rest periods so that they would take approximately 1 hour of unpaid time and zero rest breaks. However, even these late meal breaks were often interrupted.

40. The Wage Order requires employers to authorize and permit employees to take an uninterrupted 30 minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee… under conditions of labor prohibited by the order is unlawful." Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Although meals were routinely late and noncompliant, Defendant never paid penalty pay to Plaintiff, as indicated on his paystubs. As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

<u>THIRD CAUSE OF ACTION</u>

FAILURE TO PROVIDE REST PERIODS, COOL-DOWN REST PERIODS AND SAFE AND HEALTHFUL PLACE OF EMPLOYMENT

Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., 6300, 6310, 6400 et seq., Wage Orders

(Plaintiff Against All Defendant)

41. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

42. Plaintiff and his fellow employees regularly worked in excess of four hours, or a major fraction thereof, during work days without being provided at least a ten minute rest period in which

he was relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Employees were not able to take any paid breaks and were instead required to take a longer, unpaid meal period.

43. In addition, even if breaks were given (and they were not), they could not be compliant with California law. Employees, including Plaintiff, who worked outdoors were not provided with sufficient potable water, bathrooms, or shade- all required under CA law. Labor Code §226.7 requires that employers provide rest periods and cool down rest periods that comply with state laws, including those that require adequate shade, restrooms, and water to employees for use during required break and cool-down rest periods.

44. Cool-Down Rest Periods. Even on summer days when temperatures in Coachella Valley rose well above one hundred (100) degrees Fahrenheit, Defendant discouraged employees from taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working for employers that maintain “outdoor places of employment” “shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating.” Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

45. Potable Drinking Water. Rest breaks did not comply with state laws as required by Labor Code §226.7 because employee were denied sufficient potable water. California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.”8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Plaintiff, class members and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working outdoors throughout the duration of the shift. Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars ($50), nor more than two hundred dollars ($200), or by imprisonment for not more than 30 days, or by both the fine and

imprisonment." . Pursuant to Cal. Labor Code §6712, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty…of not less than seven hundred fifty dollars ($750) for each violation." Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

46. Adequate Shade. Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires employers to allow access to shade. The regulations define "shade" as "blockage of direct sunlight." Defendant failed to provide Plaintiff, class members and aggrieved employees, who worked outdoors, with adequate shade. Labor Code sections 6300, 6310 and 6400, *et seq*. requires all employers to provide a safe and secure workplace. Because Defendant did not provide shade required by 8 CCR 3395 at their "outdoor places of employment," Plaintiff and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health. Because shade is required, failure to provide adequate shade results in insufficient recovery periods. Damages and PAGA penalties for violation of Labor Code §226.7 are extensive.

47. Legally Compliant Bathrooms. Bathrooms were ½ mile away and clearly inaccessible at any time except during employees' unpaid meal break. Breaks did not comply with state laws as required by Labor Code §226.7 because workers were not provided with clean bathrooms and sufficient handwashing facilities and Plaintiff, class members and aggrieved employees had to deal with inadequate bathroom conditions due to Defendant's simple failure to provide basic human necessities. Cal. Code Regs. tit. 8, § 3457 requires that "[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years." Labor Code §6712 requires toilets to be "serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance." Moreover, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty…of not less than seven hundred fifty dollars ($750) for each violation." Labor Code §6712. The public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, *et seq.* requires all employers to take reasonable steps to

provide a safe and secure workplace. Unfortunately, Defendant failed to do so in failing to provide bathrooms, water, and shade.

48. Defendant failed to pay Plaintiff and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on the above paystub. Pursuant to Labor Code §1198, "the employment of any employee… under conditions of labor prohibited by the order is unlawful." Accordingly, because Defendant violated Wage Order provisions requiring rest breaks, Defendant violated §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES DUE UPON TERMINATION

Cal. Labor Code §§201, 202, 203 and 2698 et seq. Wage Orders 13 & 14

(Plaintiff Against All Defendant)

49. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

50. Failure to Pay Wages Due Upon Termination. Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and

unpaid wages in accordance with Labor Code section 201 or 202. Plaintiff was terminated on May 30, 2022, but did not receive his final pay until June 3, 2022.

51. Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203. Defendant willfully failed to pay Plaintiff, class members and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Plaintiff and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Defendant violated Labor Code sections 201 and/or 202.

52. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay Plaintiff and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

FIFTH CAUSE OF ACTION

PAYSTUB AND RECORD KEEPING VIOLATION

AGAINST ALL DEFENDANT

Cal. Labor Code §§ 226, 1174, 2698 *et seq*.

(Plaintiff Against All Defendant)

53. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

54. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. Wage statements list LGR, LLC, although the legal name of the employer is Labar Golf Renovations, LLC. LGR, LLC is the name of a different LLC that was suspended in 2005 and is based in Gardena, CA, and apparently unrelated to Defendant. By failing to state the true legal name, Plaintiff, class members and aggrieved employees are

hindered from knowing the identity of the entity to hold accountable for the various wage and hour violations they experienced.

55. Additionally, based on and as a result of the above-mentioned Labor Code violations, Defendant maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Defendant further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

56. Plaintiff will seek penalties as permitted under Labor Code §226 for himself and other aggrieved employees for each violation. Further, Plaintiff will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Defendant if authorized to file a representative action on behalf of the State of California for Defendant's paystub violations.

SIXTH CAUSE OF ACTION

UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT ("UCL")

AGAINST ALL DEFENDANT

(Plaintiff Against All Defendant)

57. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

58. Defendant knowingly committed, and upon information and belief continue to commit, ongoing unlawful business practices within the meaning of the UCL, including, but not limited to unlawful practices as described in the causes of action articulated above, and hereby incorporated herein.

59. Plaintiff lost money and property as a result of Defendant's unlawful business practices described above.

60. Pursuant to the UCL, Plaintiff, all Class Members, and Aggrieved Employees are entitled to restitution of money or property acquired by Defendant by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

61. Pursuant to the UCL, Plaintiff, Class Members, and Aggrieved Employees are entitled to injunctive relief against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining Defendant from engaging in the unlawful business practices described above, Plaintiff and the general public will be irreparably injured.

62. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of Plaintiff, Class Members, Aggrieved Employees and of the general public.

63. Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the general public.

64. Defendant's numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code § 17200, et seq.

65. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff, Class Members and Aggrieved Employees are entitled to restitution of unpaid wages and penalty pay, among other relief alleged herein, that were withheld and retained by Defendant during a period that commences four years prior to the filing of this action. Plaintiff, Class Members and aggrieved employees are further entitled to a permanent injunction requiring Defendant to comply with all provisions of California labor law, including properly paying the lawful rate of pay for all hours worked, providing meal/rest periods to all workers as defined herein, timely pay wages upon discharge, maintain accurate wages statements and payroll records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

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SEVENTH CAUSE OF ACTION

STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE §2698 et seq.

(Plaintiff Against All Defendant)

66. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

67. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an aggrieved employee, on behalf of himself and other current or former employees, may recover penalties under any provision of the Labor Code that provides for civil penalties. These penalties are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved employee under PAGA.

68. As set forth above, Defendant has committed numerous violations for which the Labor Code provides for penalties, including violations of all applicable Labor Code provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned Labor Code provisions as statues to which §2699.3's procedural requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural requirements specified in §2699.3 by providing written notice to the Defendant and the Labor & Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and correct copy of the Notice correspondence showing compliance with §2699.3. No notice of intent to investigate the alleged violations was provided within the statutory period. Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and all other aggrieved current and former employees of Defendant. Plaintiff, therefore, now pursues this cause of action as permitted by §2698, et seq.

69. Enforcement of statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public interest in California. Consequently, Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated herein is necessary, as no public agency has pursued

enforcement. Plaintiff is incurring a financial burden in pursing this action and it would be against the interests of justice to require payment of attorneys' fees and costs from any recover that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq*., and Code of Civil Procedure §1021.5

70. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of Civil Procedure §1021.5 and other applicable law in part, because:

A. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by requiring Defendant to comply with the wage and hour laws and California's unfair business practice law;

B. This action will result in a significant benefit to Plaintiff, the Class, and the general public by bringing to a halt unlawful and/or unfair activity;

C. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many of Defendant's employees would not be aware that the acts and practices they were subjected to by Defendant was wrongful;

D. Unless this action is prosecuted, Defendant will continue to mislead their employees about the true nature of their rights and remedies under the wage and hour laws; and

E. An award of attorneys' fees and costs is necessary for the prosecution of this action and will result in a benefit to Plaintiff, the Class, Aggrieved Employees, and to consumers in general, by preventing Defendant from continuing to circumvent the wage and hour statues and frustrate the long-standing recognition by the California legislature and the courts that such statutes, as pled herein, are not merely a matter of private concern between employer and employee to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes have been described as a matter of public concern, were designed to provide minimum substantive guarantees to individual workers and are essential to public welfare.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

That Plaintiff, Class Members, and Aggrieved Employees receive an award in the amount of unpaid wages owed, including interest thereon, and penalties as follows:

For Causes of Action 1-7:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
2. Provision of class notice to all members of the Class;
3. That Defendant is found to have violated the above-referenced provisions of the Labor Code, CCR and IWC Wage Order 5-2001 as to Plaintiff, Class Members and Aggrieved Employees;

For the First Cause of Action- Failure to Pay Wages, Including Overtime Wages:

1. For compensatory damages according to proof at trial;
2. For prejudgment interest, at the legal rate;
3. For penalties pursuant to Labor Code §§ 218, 510, 558, 1194, 1197, 1197.1, 1198;
4. For attorneys' fees;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court may deem appropriate.

For the Second Cause of Action- Failure to Provide Timely Meal Breaks:

1. For compensatory damages and penalties according to proof at trial;
2. For additional wages pursuant to Labor Code § 512, 226.7;
3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and

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

For the Third Cause of Action- Failure to Provide Rest Breaks, Cool-down Rest Periods and Safe and Healthful Place of Employment:

1. For compensatory damages and penalties according to proof at trial;
2. For additional wages pursuant to Labor Code § 226 (a), 226.7, 512, 558, 1198, 6300, 6310, 6400 *et seq*.;
3. For penalties pursuant to Labor Code §§ 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Fourth Cause of Action- Failure to Pay Wages Due Upon Termination:

1. For compensatory damages according to proof at trial;
2. For additional wages pursuant to Labor Code § 201, 202, 203;
3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Fifth Cause of Action- Inaccurate Payroll Records:

1. For compensatory damages according to proof at trial;
2. For penalties pursuant to Labor Code §§ 226 and 1174;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Sixth Cause of Action- Unfair Business Practices:

1. For a preliminary and permanent injunction requiring Defendant to (1) pay all owed wages; (2) adopt a lawful timekeeping practice; (3) provide meal and rest periods; (4) provide safe working conditions; and (5) provide and maintain appropriate payroll records;
2. For compensatory damages according to proof at trial;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Seventh Cause of Action- PAGA

1. For penalties pursuant to the Private Attorneys General Act, Labor Code §2698 et seq.
2. For attorneys' fees;
3. For costs of suit incurred;
4. For such other and further relief as the Court deems proper.

DATED: October 16, 2023

KOUL LAW FIRM

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BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JUSTINO CHAVEZ
and putative class members

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the putative class, hereby demands trial by jury to the full extent permitted by law.

DATED: October 16, 2023

KOUL LAW FIRM

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BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JUSTINO CHAVEZ
and putative class members