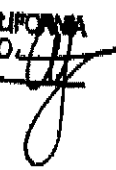


FILED**SEP 05 2023**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONOBY: 

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 Rebecca Yzaguirre, and Cory Durcan

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONO

REBECCA YZAGUIRRE, and CORY DURCAN,
 individually and on behalf of all similarly situated
 individuals and aggrieved employees,

Plaintiffs,

v.

INTRAWEST HOSPITALITY MANAGEMENT,
 LLC, ALTERRA MOUNTAIN COMPANY US,
 INC., and DOES 1 to 100,

Defendants.

NO. 23UCM54
 CLASS ACTION

FIRST AMENDED COMPLAINT

1. Minimum Wage Violations
2. Overtime Violations
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Penalties
6. Sick Pay Violations
7. Expense Reimbursement Violations
8. Waiting Time Penalties
9. Violation of Unfair Competition Law
10. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Rebecca Yzaguirre is a resident of Mono County.
2. Plaintiff Cory Durcan is a resident of Ventura County.
3. Defendant Intrawest Hospitality Management, LLC is a Delaware corporation, based in Colorado, that operates mountain resorts in California.
4. Defendant Alterra Mountain Company US, Inc. is a Delaware corporation, based in Colorado, that operates mountain resorts in California.
5. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section

1 474 to allege the true names and capacities when ascertained.

2 6. The named and Doe defendants are collectively referred to as "Defendants."

3 7. Plaintiffs are informed and believe that each of the Defendants was the agent or employee
4 of the other defendants and acted in the scope of agency or employment.

5 8. Venue is proper in Mono County because Plaintiffs worked at Defendants' Monache Resort
6 in Mammoth Lakes as hotel staff.

7 9. Defendants employed Plaintiffs and the class members as hotel staff. Therefore, Wage
8 Order 5 applies.

9 10. The class members and aggrieved employees include people who worked at any of the
10 following resorts within the class period as described below: Mammoth Mountain, Big Bear
11 Mountain Resort, June Mountain, Snow Valley Mountain Resort, and Palisades Tahoe.

12 11. Plaintiff Yzaguirre worked for Defendants from September 2022 to March 2023.

13 12. Plaintiff Durcan worked for Defendants from December 2022 to April 2023.

14 13. Plaintiffs and the class members were not exempt since they did not customarily and
15 regularly exercise discretion and independent judgment.

16 14. Throughout Plaintiffs' and the class members' employment, they did not receive compliant
17 meal and rest periods, did not receive overtime, premium pay, and sick time at the correct regular
18 rate, did not receive at least the minimum wage for work off the clock, did not receive accurate
19 wage statements, and were not reimbursed for work-related expenses.

20 15. On June 21, 2023 Plaintiff sent Defendants a PAGA letter and uploaded the letter to the
21 LWDA website; since it has been more than 65 days Plaintiffs may now request PAGA penalties.

22

23 CLASS ACTION ALLEGATIONS

24 16. The class is defined as the following: "All non-exempt employees who worked for
25 Defendants in California as from four years prior to filing the case to the date of certification or
26 judgment, whichever is earlier."

27 17. There is a well-defined community of interest, and the proposed class is ascertainable from
28 Defendants' employment records. Further, the following apply to show the viability of a class

1 action pursuant to Code of Civil Procedure section 382:

- 2 a. Numerosity: The members of the class as defined are so numerous that joinder
3 of all class members is impracticable.
- 4 b. Commonality: This action involves common questions of law and fact to the
5 class because the action focuses on Defendants' systematic course of conduct
6 with respect to violating the Labor Code and IWC Wage Order.
- 7 c. Typicality: The claims are typical of the claims of the class. Plaintiff was
8 subjected to the same violations and seeks the same types of damages,
9 restitution, and other relief on the same as those of the members of the class.
- 10 d. Adequacy of Representation: Plaintiff will fairly and adequately represent and
11 protect the interests of the class. Plaintiff understands the obligations as a class
12 representative and is willing and able to fulfill them. Plaintiff's counsel is
13 competent and experienced in litigating large employment class actions and
14 complex litigation matters, including wage and hour cases like this.
- 15 e. Superiority of Class Action: A class action is superior to other available means
16 for efficient adjudication. Class action treatment will allow similarly situated
17 persons to pursue the claims in a manner that is most efficient and economical.

18 18. There are common questions of law and fact including but not limited to:

- 19 f. Whether Defendants did not pay overtime at the correct regular rate of pay in
20 violation of Labor code sections 510 and 1194;
- 21 g. Whether Defendants violated Labor Code sections 510 and 1194 for not paying
22 at least the minimum wage for work off the clock;
- 23 h. Whether Defendants violated Labor Code section 512 and Wage Order 9 by not
24 providing meal breaks;
- 25 i. Whether Defendants violated Wage Order 9 for not providing rest breaks;
- 26 j. Whether Defendants violated Labor Code section 226 by providing inaccurate
27 wage statements;
- 28 k. Whether Defendants violated Labor Code section 226.7 by not paying premium

1 pay for missed meal and rest breaks at the correct regular rate of pay;

2 l. Whether Defendants did not pay sick time at the correct regular rate of pay;

3 m. Whether Defendants did not reimburse for work-related expenses;

4 n. Whether Defendants engaged in unfair competition; and

5 o. The amount of damages, wages, and penalties owed.

6
7 FIRST CAUSE OF ACTION

8 Minimum Wage Violations

9 Against All Defendants

10 19. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

11 20. Plaintiffs and the class members were required to work off the clock, and this time should
12 have been paid at least the minimum wage.

13 21. Plaintiffs and the class members are owed reimbursement for unpaid wages, interest, and
14 statutory attorney fees apply.

15
16 SECOND CAUSE OF ACTION

17 Overtime Violations

18 Against All Defendants

19 22. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

20 23. Plaintiffs and the class members were required to work over eight hours in a day and/or 40
21 hours in a week without being compensated for all overtime in violation of Labor Code 510.

22 24. Plaintiffs and the class members should have received overtime at the correct regular rate of
23 pay for the overtime work; the reason for the violations is that Plaintiffs and the class members
24 received fringe benefits that should have been incorporated into the regular rate pay but were not.

25 25. The remedy for the overtime violations is payment of the unpaid overtime at the correct
26 regular rate of pay, plus interest and attorney fees.

27 ///

28 ///

1 THIRD CAUSE OF ACTION

2 Meal Period Violations

3 Against All Defendants

4 26. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

5 27. Pursuant to Wage Order 5 every employer shall authorize and permit employees to take
6 meal periods of thirty minutes for every five hours worked.

7 28. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 5, when the employer does
8 not provide an employee with the required meal period, the employer shall pay the employee one
9 hour of pay at the employee's regular rate for each workday that a rest period is not provided.

10 29. Plaintiffs and the class members were denied meal periods as meal periods were not
11 provided or were on-duty.

12 30. As a result of Defendants' meal period violations, Plaintiffs and the class members are
13 entitled to premium pay which is one additional hour of compensation for each missed break at the
14 correct regular rate of pay.

15
16 FOURTH CAUSE OF ACTION

17 Rest Period Violations

18 Against All Defendants

19 31. Plaintiffs incorporate by reference paragraphs 1 to 18 of the complaint.

20 32. Pursuant to Wage Order 5 every employer shall authorize and permit employees to take rest
21 periods of ten minutes for every four hours worked.

22 33. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 5, when the employer does
23 not provide an employee with the required rest period, the employer shall pay the employee one
24 hour of pay at the employee's regular rate of compensation for each workday that a rest period is
25 not provided.

26 34. Plaintiffs and the class members were denied rest periods as rest periods were not provided
27 or were on-duty.

28 35. As a result of Defendants' rest period violations, Plaintiffs and the class members are

1 entitled to premium pay which is one additional hour of compensation for each missed break.

2
3 FIFTH CAUSE OF ACTION

4 Wage Statement Penalties

5 Against All Defendants

6 36. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

7 37. Defendants' wage statements issued to Plaintiffs and the class members violated Labor
8 Code section 226 since they intentionally did not list the work performed off the clock, did not list
9 the correct regular rates of pay for overtime, and did not list premium pay and sick pay at the
10 regular rates of pay.

11 38. As a result, Plaintiffs and the class members are entitled to wage statement penalties up to
12 \$4,000 each and attorney fees.

13
14 SIXTH CAUSE OF ACTION

15 Sick Pay Violations

16 Against All Defendants

17 39. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

18 40. Sick pay accrues for employees pursuant to Labor Code section 246.5.

19 41. Sick pay is a type of wage pursuant to Labor Code sections 200 and 218.5.

20 42. Defendants did not pay sick pay at the correct regular necessitated by Labor Code 246(I).

21 43. Based on that violation, Plaintiffs and the class are entitled to the difference of unpaid sick
22 pay, and attorney fees and costs pursuant to Labor Code section 218.5.

23
24 SEVENTH CAUSE OF ACTION

25 Expense Reimbursement Violations

26 Against All Defendants

27 44. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

28 45. Labor Code section 2802 provides employers must reimburse employees for all work-

1 related expenses.

2 46. Plaintiffs and the class members had to purchase docusign accounts and use their personal
3 cell phones while working, but they were not reimbursed for these expenses.

4 47. Plaintiffs and the class members are entitled to reimbursement for these expenses, as well as
5 statutory attorney fees.

6
7 EIGHTH CAUSE OF ACTION

8 Waiting Time Penalties

9 Against All Defendants

10 48. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

11 49. Plaintiffs and the class members who no longer work for Defendants were still owed wages
12 when they stopped working for Defendants, and were willfully not paid these wages.

13 50. Therefore, pursuant to Labor Code section 203, Plaintiffs and the class members who no
14 longer work for Defendants are owed waiting time penalties, which are 30 days of wages each.

15
16 NINTH CAUSE OF ACTION

17 Violation of Unfair Competition Law

18 Against All Defendants

19 51. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

20 52. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

21 53. This claim is being brought under the unlawful prong of the UCL.

22 54. Defendants violated the Labor Code and IWC Wage Order by not paying all wages due, and
23 overtime, premium pay, and sick pay at the correct regular rate.

24 55. Plaintiffs and the class members are entitled to restitution for the above.

25 56. Under Code of Civil Procedure section 1021.5, Plaintiff is entitled to attorney fees.

26 ///

27 ///

28 ///

1 TENTH CAUSE OF ACTION

2 PAGA Penalties

3 Against All Defendants

4 57. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

5 58. The PAGA aggrieved employees are all nonexempt employees of Defendants from June 21,
6 2022 to through the date of settlement or final disposition of the action, whichever is later.

7 59. As stated above, Plaintiffs and the aggrieved employees had to perform work off the clock;
8 the PAGA penalties in Labor Code sections 1197.1 and 2699 apply.

9 60. Plaintiffs and the aggrieved employees worked unpaid overtime; the PAGA penalties in
10 Labor Code sections 558, 1197.1, and 2699 apply.

11 61. Plaintiffs and the aggrieved employees did not receive compliant meal periods; the PAGA
12 penalties in Labor Code sections 558 and 2699 apply.

13 62. Plaintiffs and the aggrieved employees did not receive complaint rest periods; the PAGA
14 penalties in Labor Code section 2699 apply.

15 63. Plaintiffs and the aggrieved employees did not receive sick pay at the correct regular rate;
16 the PAGA penalties in Labor Code section 2699 apply.

17 64. Plaintiffs and the aggrieved employees did not receive accurate wage statements; the PAGA
18 penalties in Labor Code section 2699 apply.

19 65. Plaintiffs and the aggrieved employees did not receive reimbursement for work-related
20 expenditures; the penalties in Labor Code section 2699 apply.

21 66. Plaintiffs and the aggrieved employees who no longer work for Defendants did not receive
22 waiting time penalties; the penalties in Labor Code section 2699 apply.

23 67. Further, Plaintiffs are entitled to attorney fees and costs under Labor Code section 2699.

24
25 PRAYER

26 For All Causes of Action

27 1. That the court determine that this action may be maintained as a class action

28 2. That Plaintiffs are appointed representatives of the class

1 3. That Counsel for Plaintiffs are appointed as class counsel.

2

3 First Cause of Action

4 1. Payment of all unpaid wages

5 2. Interest

6 3. Attorney fees

7 4. Other relief the court deems proper

8

9 Second Cause of Action

10 1. Payment of overtime

11 2. Interest

12 3. Attorney fees

13 4. Other relief the court deems proper

14

15 Third Cause of Action

16 1. Premium pay at the correct regular rate of pay

17 2. Other relief the court deems proper

18

19 Fourth Cause of Action

20 1. Premium pay at the correct regular rate of pay

21 2. Other relief the court deems proper

22

23 Fifth Cause of Action

24 1. Wage statement penalties

25 2. Attorney fees and costs

26 3. Other relief the court deems proper

27 //

28 ///

1 Sixth Cause of Action

- 2 1. Payment of all unpaid sick pay
3 2. Attorney fees and costs
4 3. Other relief the court deems proper

5
6 Seventh Cause of Action

- 7 1. Reimbursement of work-related expenses
8 2. Attorney fees and costs
9 3. Other relief the court deems proper

10
11 Eighth Cause of Action

- 12 1. Waiting time penalties

13
14 Ninth Cause of Action

- 15 1. Restitution of unpaid wages, premium pay, and sick pay
16 2. Attorney fees
17 3. Other relief the court deems proper

18
19 Tenth Cause of Action

- 20 1. Payment of all applicable PAGA penalties
21 2. Attorney fees and costs
22 3. Other relief the court deems proper

23
24 Date: August 25, 2023

FRONTIER LAW CENTER

25
26 

27 Adam Rose
28 Attorney for Plaintiffs
Rebecca Yzaguirre, et al.