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Individually and on behalf of all other similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Failure to Reimburse Expenses**
- 8. Unfair Competition**
- 9. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff ANTHONY AFFATATO ("Plaintiff"), on behalf of himself and all other similarly
situated employees, hereby files this Second Amended Complaint against Defendants SIERRA
VIEW COUNTRY CLUB, a California Corporation; SIERRA VIEW LAND COMPANY, a
California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
"Defendants"). On information and belief, Plaintiff alleges the following:

1 **INTRODUCTION**

2 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
3 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
4 violations, waiting time penalties, failure to reimburse expenses, and unfair competition.

5 **JURISDICTION AND VENUE**

6 2. The Placer County Superior Court has jurisdiction in this matter pursuant to California
7 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
8 California Business and Professions Code, and Wage Order No. 5.

9 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
10 Defendants reside in Placer County. In addition, some of the wrongful acts and violations of law
11 asserted herein occurred within Placer County, and Defendants' obligation to pay wages arose in Placer
12 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

13 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
14 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
15 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
16 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
17 (“LWDA”) on approximately June 13, 2023. Additionally, Plaintiff gave an amended written notice via
18 online submission to the LWDA on approximately April 10, 2024. Plaintiff provided facts and legal
19 bases for his claims within the notice to the LWDA on all violations asserted under the Private
20 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The June 13,
21 2023, notice and the April 10, 2024 notice were also sent via certified mail to Defendants on the same
22 day. To date, the LWDA has not provided any response to Plaintiff’s notice correspondence.
23 Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys
24 General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated
25 employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
26 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
27 include, but is not limited to the following: all individuals who have worked, or continue to work, for
28 Defendants in California as a non-exempt employee at any time between June 13, 2022 to the present.

1
2 **PARTIES**

3 5. ANTHONY AFFATATO is an individual over the age of eighteen (18) and is a
4 resident of the State of California.

5 6. On information and belief, Plaintiff alleges, SIERRA VIEW COUNTRY CLUB, is
6 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
7 operator of an industry, business and/or facility doing business in the State of California.

8 7. On information and belief, Plaintiff alleges, SIERRA VIEW LAND COMPANY, is
9 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
10 operator of an industry, business and/or facility doing business in the State of California.

11 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
12 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
13 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
14 names and capacities of these DOE Defendants when they are ascertained.

15 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
16 other Defendants and was acting within the course and scope of such agency or employment. The
17 Defendants are jointly and severally liable to Plaintiff.

18 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
19 were members of and/or engaged in a joint employment, joint venture, partnership and common
20 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
21 joint venture, partnership and common enterprise.

22 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
23 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

24 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
25 wrongs, complaints, injuries and/or damages alleged in this Complaint.

26 **CLASS ALLEGATIONS**
27
28

1 13. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
2 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

3 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

4 All individuals who have worked, or continue to work, for Defendants in
5 California as a non-exempt employee at any time between June 13, 2019,
6 to the present.

7 14. This action has been brought and may be properly maintained as a class action,
8 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
9 defined community of interests in the litigation and the proposed class is easily ascertainable.

10 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
11 is impracticable under the circumstances of this case. While the exact number of class
12 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
13 Defendants have employed as many as one hundred (100) individuals falling within the
14 above stated class definition throughout the State of California during the applicable
15 statute of limitations, who were subjected to the policies and practices outlined in this
16 Complaint. As such, joinder of all members of the putative class is not practicable.

17 (b) Common Questions Predominate: Common questions of law and fact exist as to all
18 members of the putative class and predominate over questions that affect only individual
19 members of the class. These common questions of law and fact include, without
20 limitation, the following:

- 21 (1) Whether Defendants violated the law by not paying employees for all hours
22 worked;
23 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
24 class members were not paid all minimum and overtime wages owed;
25 (3) Whether Defendants maintained accurate payroll records;
26 (4) Whether Defendants failed to correctly calculate the regular rate of pay for
27 premium wage purposes such as overtime, double time, meal and rest period
28 premiums, and sick leave wages;

- 1 (5) Whether Defendants failed to pay meal and rest period premium for meal and rest
2 period violations;
- 3 (6) Whether as a result of Defendants' policies and practices, Plaintiff and putative
4 class members were not authorized and permitted to take all meal and rest
5 periods;
- 6 (7) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
7 class members received all reimbursement owed;
- 8 (8) Whether as a result of Defendants' policies and practices Plaintiff's and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation; and
- 11 (9) Whether Defendants provided Plaintiff's and putative class members with wage
12 statements that complied with Labor Code section 226.

13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt employees who were not paid all
17 overtime wages owed, meal and rest period premiums, as a result of Defendants' policies
18 and practices resulting in inaccurate wage statements that did not itemize the accurate
19 overtime wages owed, meal and rest period premiums, and sick leave wages.
20 Additionally, Defendants issued Plaintiff and all members of the putative class wage
21 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
22 each member of the putative class will have suffered the same type of harm and seek the
23 same type of recovery based on the same legal theories.

24 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
25 putative class. For all relevant times, Plaintiff resided in California and worked for
26 Defendants in California. Moreover, Plaintiff is an adequate representative of the
27 putative class as Plaintiff has no interests that are adverse to those of putative class
28

members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

- (e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

15. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully set forth herein.

17. Plaintiff was employed with Defendants from August 13, 2003, to January 31, 2023, as a non-exempt employee. Plaintiff was paid fifteen dollars and fifty cents (\$15.50) per hour plus a portion of mandatory service charges Defendants' patrons paid as part of their bill. Plaintiff worked as a bartender for Defendants. Defendants manage a country club in Roseville, California. Plaintiff's job duties and responsibilities included but were not limited to taking orders, preparing cocktails and drinks, processing payment for customers, cleaning the bar, stocking the bar, making sure the bar had all the necessary drinks, food, and equipment to run smoothly. Plaintiff was responsible for keeping count of the number of drinks served and how many patrons were frequenting the bar. In addition, Plaintiff was responsible for opening the bar, preparing all the ingredients, and setting up the bar for opening. Plaintiff

1 would also clean the bar and do all the necessary tasks to close the bar including informing the
2 customers of the last call for alcohol and when the bar would close.

3 18. Plaintiff and Similarly Situated Employees usually worked over six (6) or eight (8) hours
4 per day and about twenty-five (25) hours per week. At times, Plaintiff and Similarly Situated Employees
5 worked over eight (8) hours per day. Plaintiff and Similarly Situated Employees worked in a fast-paced
6 working environment and were busy most of the time. Plaintiff and Similarly Situated Employees
7 worked off the clock on many occasions. For example, Plaintiff worked off the clock on many occasions
8 due to manager's requests. Plaintiff's manager would talk to Plaintiff regarding work and employee
9 issues before Plaintiff would clock in at the beginning of his shift. Plaintiff estimates that he spent about
10 twenty (20) minutes per week talking to his manager regarding work issues prior to clocking in.
11 Moreover, Plaintiff's manager would require Plaintiff to perform certain tasks or work after Plaintiff
12 would clock out. His manager would ask Plaintiff if certain things were done after Plaintiff had already
13 clocked out and would ask Plaintiff to finish those tasks prior to Plaintiff leaving the premises. For
14 example, his manager would ask Plaintiff the status of the liquor count, if certain things were done, if
15 certain things were thrown away and to perform all those tasks prior to leaving. Plaintiff estimates that
16 he worked about thirty (30) minutes per week off the clock after the end of his shift. Plaintiff estimates
17 that he worked about fifty (50) minutes off the clock per week. Defendants were aware of Plaintiff and
18 Similarly Situated Employees were working off the clock because employees would inform Defendants
19 of this fact. For example, Plaintiff would tell his manager that he was off the clock while his manager
20 requested Plaintiff to perform certain tasks. Plaintiff even complained to Defendants' Human Resources
21 personnel, that his manager made him consistently work off the clock. However, Defendants did not
22 take any measures to have Plaintiff's manager refrain from requesting Plaintiff or other Similarly
23 Situated Employees perform work off the clock. Plaintiff and Similarly Situated Employees regularly
24 worked off the clock as a result of Defendants' practices and policies.

25 19. Defendants regularly rounded Plaintiff's and Similarly Situated Employees' time
26 punches, including, but not limited to, meal period clock-in and clock-outs. As a result, Defendants
27 failed to pay Plaintiff and Similarly Situated Employees for all hours worked, failed to provide full
28 thirty-minute meal periods, and failed to keep accurate records of all hours worked.

20. Defendants paid Plaintiff and Similarly Situated Employees a portion of mandatory service charges paid by Defendants' patrons, including, but not limited to, mandatory service charges that were added to patron's bills when they frequented the country club's restaurant. Defendants failed to incorporate the value of these amounts into the regular rate of pay in calculating Plaintiff's and Similarly Situated Employees' premium wages, including meal and rest period premiums, overtime, sick leave. This resulted in overtime, sick leave wage payments, and meal and rest period wage payments that were substantially lower than they otherwise should be. For example, Defendants paid Plaintiff and Similarly Situated Employees bi-monthly and utilized a defined workweek for overtime/regular rate calculation purposes of Sunday 12:00 a.m. to Saturday 11:59:59 p.m. During the pay period of November 16, 2021, to November 31, 2021, Plaintiff's basic hourly rate was \$14.00, and he was paid overtime at the rate of \$21.00. Despite being paid \$780.29 from mandatory services charges during this period, Defendants only paid overtime at 1.5x the base hourly rate and meal period premiums at 1x the base hours rate.

21. Plaintiff and Similarly Situated Employees regularly had to work through their meal and rest periods due to inadequate staffing. For example, Plaintiff's manager required Plaintiff to always be at the bar, unable to leave and having to eat at his workstation. Plaintiff and Similarly Situated Employees regularly worked over six (6) hours per day without being provided lawful meal periods. Due to the nature of their work and instructions of Defendants' management, employees would generally work full six (6) to eight (8) hour shifts without taking any duty-free rest or meal periods. This is because Plaintiff and other Similarly Situated Employees were always required to remain ready to work to meet the needs of patrons during their shift. Moreover, Plaintiff's manager changed Plaintiff's and Similarly Situated Employees' timecards to show that Plaintiff and Similarly Situated Employees took compliant meal and rest periods when, in fact, they had not. Again, Defendants were aware of this because Plaintiff informed them that his manager changed his timecards. The changing of the timecard time entries affected Plaintiff's and Similarly Situated Employees' meal and rest period premiums as well as minimum and overtime wages, and the accrual of sick hours. Thus, Defendants failed to accurately record Plaintiff and Aggrieved employee's meal and rest periods as well as minimum and overtime hours and wages, and the correct accrual of sick leave hours. As a result of these

practices, Plaintiff and Similarly Situated Employees were not paid wages for all hours worked and did not receive the proper accrual of sick leave hours.

22. Defendants also did not have a policy to reimburse Plaintiff and Similarly Situated Employees or use of their personal cell phones for work purposes. Plaintiff and Similarly Situated Employees used their personal cell phones to communicate with managers, supervisors, and other Similarly Situated Employees regarding work issues and scheduling. For example, Plaintiff's manager would text him regarding work issues.

23. As a result of Defendants' failure to pay Plaintiff and Similarly Situated Employees all minimum wages, overtime wages, and meal and rest period premiums owed, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, and the accurate gross and net wages earned.

24. As of this date of this letter, Defendants have not paid Plaintiff and Similarly Situated Employees all the overtime wages, meal and rest period premiums, and sick leave wages owed to them. To date, Defendants have not paid Plaintiff and Similarly situated employees all the overtime wages, meal and rest period premiums, and sick leave wages owed to them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **FAILURE TO PAY OVERTIME WAGES** **(As to all Defendants)**

25. Plaintiff incorporated by reference and re-alleges paragraphs 1 through 24 as though fully set forth herein.

26. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A); Cal. Lab. Code §§ 510, 1194.*

27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However,

1 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
2 worked at their regular rate of pay.

3 28. Plaintiff and similarly situated employees were not exempt from overtime protections
4 employees under the California Wage Orders and Labor Code.

5 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **(As to all Defendants)**

11 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
12 set forth herein.

13 31. For the period preceding the filing of this Complaint, Defendants were required to
14 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
15 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code §
16 1194.

17 32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
18 obligation to pay the minimum wage for each hour worked but failed to do so.

19 33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **THIRD CAUSE OF ACTION**
23 **MEAL PERIOD VIOLATIONS**
24 **(As to all Defendants)**

25 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
26 set forth herein.

27 35. An employer must provide an employee a meal period in accordance with the
28 applicable Wage Order, and California Labor Code sections 226.7 and 512.

1 36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

4 37. California Labor Code section 512 and Wage Order No. 5 section 11(B) further
5 provide that employers may not employ employees for a work period for more than ten (10) hours
6 per day without providing the employee with a second meal period of at least thirty (30) minutes.
7 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
8 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
9 (1) hour of pay at their regular rate of compensation for each meal period not provided.

10 38. Defendants employed Plaintiff and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
12 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
13 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
14 employees to take their first meal period before the completion of their fifth hour of work and failed
15 to allow Plaintiff and similarly situated employees to take their second meal period before the
16 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
17 rights to all meal periods throughout their employment.

18 39. Defendants further failed to pay Plaintiff and similarly situated employees the
19 applicable meal period premiums for any such missed meal breaks.

20 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
21 employees have been damaged as stated in the section below entitled "DAMAGES," which is
22 incorporated here to the extent pertinent as if set forth here in full.

23 **FOURTH CAUSE OF ACTION**
24 **REST PERIOD VIOLATIONS**
(As to all Defendants)

25 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
26 set forth herein.

27 42. An employer must provide an employee a rest period in accordance with the
28 applicable Wage Order and California Labor Code section 226.7.

43. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

45. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at

1 *the place of employment or at a central location within the State of*
2 *California.*

3 49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
4 itemized statement or failed to provide an accurate and complete itemized statement showing the
5 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
6 accurately itemize all hours worked, all properly accrued sick leave hours, all applicable hourly rates
7 in effect during the pay period, and gross and net wages earned. Plaintiff and similarly situated
8 employees were not able to promptly and easily determine the required information from their
9 paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over
10 whether they received all wages owed and were prevented from effectively challenging information
11 on their wage statements.

12 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
13 employees have been damaged as stated in the section below entitled "DAMAGES," which is
14 incorporated here to the extent pertinent as if set forth here in full.

15 **SIXTH CAUSE OF ACTION**
16 **WAITING TIME PENALTIES**
17 **(As to all Defendants)**

18 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
19 set forth herein.

20 52. An employer must pay an employee who is terminated all unpaid wages immediately
21 upon termination. *See* Cal. Lab. Code § 201.

22 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
23 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

24 54. Plaintiff and similarly situated employees did not receive all wages, including minimum
25 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
26 within the required time after their separation from employment.

27 55. An employer who willfully fails to pay an employee wages in accordance with California
28 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
days. *See* Cal. Lab. Code § 203.

56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid for all hours worked because managers changed Plaintiff's and similarly situated employees' timecards to show that Plaintiff and similarly situated employees took compliant meal and rest periods. Thus, Defendants knew that Plaintiff and similarly situated employees worked more hours than they were paid for. In addition, Defendants knew that Plaintiff and similarly situated employees were not getting their meal and rest breaks because Defendant's policy did not allow Plaintiff and similarly situated employees to take any off-duty meal periods. Furthermore, Defendants paid Plaintiff and similarly situated employees a portion of mandatory service charges but failed to incorporate that into the regular rate of pay. This resulted in overtime, sick leave wage payments, and meal and rest period wage payments that were substantially lower than they otherwise should be. Defendants knew that Plaintiff and similarly situated employees were being paid a mandatory service charge because it is reflected in their paystubs. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. California Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

60. Defendants required Plaintiff and similarly situated employees to use their personal cell phones for work purposes but failed to reimburse them for such use. Plaintiff and similarly situated employees used their personal cell phones to communicate with managers, supervisors, and other Similarly situated employees regarding work issues and scheduling.

61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

64. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter. Moreover, through Defendants' conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods.

65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code

sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

69. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

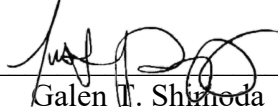
- a. For civil penalties as provided in the Labor Code for each enumerated violation;
- b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

1 Dated: May 28, 2024

Shimoda & Rodriguez Law, PC

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3 By: 
4 Galen J. Shimoda
5 Justin P. Rodriguez
6 Renald Konini
7 Attorneys for Plaintiff
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1 *Affatato v. Sierra View Country Club*
2 *Placer County Superior Court of California, S-CV-0050664*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On June 17, 2024, I served the following documents on the party below:

9 • **SECOND AMENDED COMPLAINT FOR DAMAGES**

10 Dominique Thomas (SBN 231464) 11 Lewis Brisbois 12 2185 N California Blvd, Suite 300 13 Walnut Creek, CA 94596 14 Phone: (925) 357-3451 15 Facsimile: (925) 478-3260 16 Email: Dominique.Thomas@lewisbrisbois.com 17 Izie.Hudson@lewisbrisbois.com 18 Clare.Pardini@lewisbrisbois.com 19 Betty.Jeung@lewisbrisbois.com	
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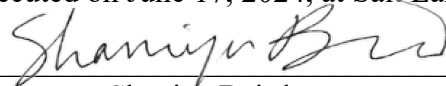
20 [] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set
24 forth above, I served the aforementioned document(s) on the parties in
25 said action by placing a true copy thereof enclosed in a sealed envelope
26 with postage thereon fully prepaid, for collection and mailing on this date,
27 following ordinary business practices, at Salt Lake City, Utah, addressed
28 as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on June 17, 2024, at Salt Lake City, Utah.

26 

27 Shaniya Baird
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