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County of Los Angeles
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Attorneys for Plaintiff MELVIN J. TRONCHEZ MOLINA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

MELVIN J. TRONCHEZ MOLINA,

Plaintiff,

v.

TOP GOLF USA INC., TOP GOLF
PAYROLL SERVICES, LLC, and DOES 1
through 50, inclusive,

Defendants.

Case No.: **23STCV27400**

**PLAINTIFF'S REPRESENTATIVE ACTION
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT (2004) ("PAGA")**

COMPLAINT FOR CIVIL PENALTIES

1. Violation of PAGA for Failure to Pay All Wages Including Minimum, Regular, and Overtime Wages (Lab. Code §§ 510, 1194);
2. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code, §§ 226.7, 512);
3. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code, §§ 226.7);
4. Violation of PAGA for Failure to Timely Pay Wages Upon Separation of Employment (Lab. Code, §§ 201-203);
5. Violation of PAGA for Failure to Maintain Accurate Payroll Records (Lab. Code, §§ 226, subd. (A), (E), 226.3, 1174, 1174.5); and
6. Violation of PAGA for Failure to Reimburse Business Expenses (Lab. Code, § 2802).

1 Plaintiff MELVIN J. TRONCHEZ MOLINA (“Plaintiff”), individually, and on behalf of
2 all others aggrieved employees, complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a representative action brought on behalf of the state of California, Plaintiff
5 himself and all non-exempt, hourly-paid employees, currently and/or formerly employed
6 aggrieved employees employed by Defendants TOP GOLF USA INC., TOP GOLF PAYROLL
7 SERVICES, LLC (“Defendants”), in the State of California during the PAGA Period. The term
8 “PAGA Period” is defined as one (1) year plus sixty-five (65) days prior to the filing of this
9 complaint through judgment. Plaintiff reserves the right to amend this complaint to reflect a
10 different “PAGA Period” as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of all aggrieved employees, seek relief against
12 Defendants, for Defendants’ practices of violating the applicable Industrial Welfare Commission
13 Wage Orders, Code of Regulations, and California Labor Codes, including: (1) Labor Code §§
14 226.7, 512 (Meal Period Violations); (2) Labor Code §§ 226.7, (Rest Period Violations) (3) Labor
15 Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime); (4) Labor Code § 204
16 (Unpaid Wages During Employment); (5) Labor Code §§ 201, 202, 203 (Failure to Pay Wages
17 Due at Separation of Employment); (6) Labor Code §§ 226, subds. (a) and (e) (Failure to Issue
18 Accurate Itemized Wage Statements); and (7) Labor Code § 2802 (Failure to Indemnify for
19 Expenditures or Losses in Discharge of Duties). These violations concern current and former
20 aggrieved employees of Defendant.

21 3. At all relevant times herein, Defendant has consistently maintained and enforced
22 against Plaintiff and the aggrieved employees the unlawful practices and policies set forth herein.

23 **JURISDICTION AND VENUE**

24 4. Venue is proper in this judicial district and the County of Los Angeles, pursuant
25 to the California Code of Civil Procedure sections 395 and 395.5, because the acts that give rise
26 to the causes of action alleged herein occurred in this county.

27 5. This Court is an appropriate venue for this action under Code of Civil Procedure
28 sections 395 and 395.5 because the acts that give rise to the causes of action alleged herein

1 occurred in the County of Los Angeles, State of California. Plaintiff hereby designates the County
2 of Los Angeles, State of California as the place of proper venue.

3 6. This Court has personal jurisdiction over Defendant because Defendant resides in,
4 is incorporated in, has its main place of business in, and/or conducts business in the State of
5 California, and a substantial portion of the acts, omissions, events, and transactions constituting
6 the causes of action alleged herein occurred within the State of California, and more specifically,
7 in the County of Los Angeles. (Code Civ. Proc. § 410.10.)

8 7. The California Superior Court has jurisdiction of this matter because the individual
9 claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold
10 and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court;
11 and upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the
12 State of California. Further, there is no federal question at issue, as the issues herein are based
13 solely on California statutes and law, including the California Labor Code, Industrial Welfare
14 Commission Wage Orders, California Code of Civil Procedure, California Rules of Court, and
15 the Business & Professions Code. Thus, the above-entitled court maintains appropriate
16 jurisdiction to that this matter.

17 **THE PARTIES**

18 **Plaintiff**

19 8. Plaintiff was employed by Defendants from around March 2022 through August
20 31, 2022, at Defendant's El Segundo, California location. At all relevant times herein, Plaintiff
21 was employed by Defendants in a non-exempt, hourly position, and entitled to compensation for
22 all hours worked, including overtime compensation and penalties from Defendants. Plaintiff was
23 employed by Defendants for at least four (4) years prior to the commencement of this action.

24 9. Each of the Plaintiff Class consists of identifiable, current, and/or former similarly
25 situated persons who were employed by Defendants in California during the Class Period.

26 **Defendant(s)**

27 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant TOP
28 GOLF USA, INC is a Texas corporation/limited liability corporation that is in the business of

1 providing golf as well as food and beverage service to its customers, whose facilities are located
2 throughout California, including Los Angeles County, and was the employer of Plaintiff. On
3 information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business
4 in good standing in California, and at all time herein mentioned has regularly conducted business
5 throughout the State of California.

6 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant TOP
7 GOLF PAYROLL SERVICES, LLC is an unknown limited liability corporation who operates
8 throughout California, including Los Angeles County, and was the employer of Plaintiff. On
9 information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business
10 in good standing in California, and at all time herein mentioned has regularly conducted business
11 throughout the State of California.

12 12. Plaintiff is ignorant of the true names, capacities, relationships and extent of
13 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
14 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
15 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
16 capacities of the DOE Defendants when that information is ascertained.

17 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
19 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
20 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
21 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
22 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
23 the conduct described in this complaint.

24 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
25 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
26 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
27 below was acting, at least in part, within the course and scope of that authority as such agent,
28 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with

1 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
2 are legally attributable to the other Defendants.

3 **ADMINISTRATIVE PREREQUISITES**

4 15. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action
5 under PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the
6 employer notice of the Labor Code sections alleged to have been violated, and after receiving
7 notice from the LWDA of its intention not to investigate, or after 65 days have passed without
8 notice from the LWDA.

9 16. On August 30, 2023, prior to the filing of this complaint, Plaintiff gave written
10 notice of the specified provisions alleged to have been violated, including the facts and theories
11 to support the alleged violations, as required by Labor Code section 2699.3. This written notice
12 was given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice
13 via the Department of Industrial Relations website. Plaintiff was given a LWDA case number of
14 LWDA-CM-978632-23. A true and correct copy of Plaintiff’s notice to the LWDA and
15 Defendant(s), dated August 30, 2023, is attached hereto as Exhibit A.

16 17. The LWDA has not provided Plaintiff with any notice that it intends to
17 investigate the violations as alleged in Plaintiff’s August 30, 2023, notice, and more than sixty-
18 five (65) calendar days have elapsed since the postmark date on the notice.

19 **FACTUAL ALLEGATIONS**

20 18. Plaintiff and aggrieved employees, and all times relevant herein, have been non-
21 exempt employees within the meaning the California Labor Code, and the implementing rules
22 of the IWC California Wage Orders.

23 19. Plaintiff was employed by Defendant in a non-exempt, hourly position as a non-
24 exempt hourly employee from March 2022 through August 31, 2022.

25 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants’
26 policies and practices described herein are common across each of Defendants’ locations within
27 the State of California.

28 21. Defendants had a policy and practice of failing to compensate Plaintiff and

aggrieved employees properly when paying overtime by failing to utilize a blended rate.

22. Defendants also had a policy and practice of failing to provide uninterrupted meal periods as a result of prioritizing customer service over Plaintiff and aggrieved employees meal periods, pursuant to labor code §§226.7, 512, 1198.

23. Defendants also had a policy and practice of failing to provide uninterrupted rest periods as a result of prioritizing customer service over Plaintiff and aggrieved employees meal period. Defendants regularly failed to provide a rest period to Plaintiff and aggrieved employees, pursuant to labor code §§226.7, 512, 1198.

24. Defendants furthermore, failed to pay all wages due pursuant to labor code 204, Defendants knew they was required to pay Plaintiff and other aggrieved employees these wages owed no later than the payday following the payroll period in which the wages were earned, yet it willfully failed to do so.

25. Defendants also failed to pay wages upon termination of employment, pursuant to labor code §§2802, as a result of failing to properly pay overtime wages earned.

26. Defendants further failed to provide accurate wage statement, pursuant to labor code 226, as a result of their failure to properly pay overtime by utilizing a weighted average.

27. Defendant also had a policy and practice of failing to reimburse for necessary business expenditure pursuant to labor code §2802, by failing to reimburse Plaintiff and Class Members for maintaining their employer mandated uniform.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(Labor Code §§ 510, 1194)

(By Plaintiff against All Defendants)

28. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

29. Any employee receiving less than the legal minimum wage or legal overtime compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees, and costs of suit. (Lab. Code, § 1194, subd. (a).)

1 30. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
2 wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January
3 1, 2016, the minimum wage for all industries shall not be less than ten dollars (\$10.00) per hour.
4 For employers who employed 26 or more people from January 1, 2017 to December 31, 2017,
5 the minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From
6 January 18, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars
7 (\$11.00) per hour. Plaintiff is informed and believes Defendant employed more than twenty-six
8 (26) employees.

9 31. Notwithstanding any other provision of the Labor Code, hourly minimum wage
10 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
11 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

12 32. In any action to recover payment of wages less than the minimum wage an
13 employee shall be entitled to recover liquidated damages in an amount equal to the wages
14 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

15 33. Any work in excess of eight (8) hours in any workday and any work in excess of
16 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
17 (1 ½) times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in
18 excess of twelve (12) hours in a workday shall be compensated at the rate of twice the regular
19 rate of pay for an employee. (Lab. Code, § 510, subd. (a).)

20 34. All wages earned in employment are due and payable twice during each calendar
21 month on dates designated in advance by the employer. (Lab. Code, § 204.)

22 35. In case of a dispute over wages, the employer shall pay, without condition and
23 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
24 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

25 36. Notwithstanding any other provision of the Labor Code, hourly minimum wage
26 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
27 an employee no less than the minimum wage for each hour worked. (Lab. Code, § 1194.)

28 37. In any action to recover payment of wages less than the minimum wage, an

1 employee shall be entitled to recover liquidated damages in an amount equal to the wages
2 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

3 38. Plaintiff and aggrieved employees regularly worked over eight (8) hours per day
4 and forty (40) hours per week. Defendants failed to pay Plaintiff, and aggrieved employees all
5 minimum wage, overtime premiums, and/or double-time premiums for all hours worked in excess
6 of over eight (8) hours per day and/or forty (40) hours per week for work performed for
7 Defendants. Plaintiff and aggrieved employees were not paid all wages earned. Pursuant to Labor
8 Code sections 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum
9 wage, overtime, and/or double-time compensation which they earned and accrued four (4) years
10 prior to filing this complaint, according to proof.

11 39. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
12 employees and the State of California for violations of Labor Code sections 510 and 1194 during
13 the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

14 40. Plaintiff, individually and on behalf of the aggrieved employees and the State of
15 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g) and Code
16 of Civil Procedure section 1021.5.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

19 **(Labor Code §§ 226.7 and 512)**

20 **(By Plaintiff against All Defendants)**

21 41. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
22 as if fully alleged.

23 42. Labor Code sections 226.7 and 512 provide that no employer shall employ any
24 person for a work period of more than five (5) hours without providing a meal period
25 uninterrupted by work duties of not less than thirty (30) minutes, or employ any person for a work
26 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
27 minutes.

28 43. Labor Code section 226.7 provides that if an employer fails to provide an

1 employee a meal period in accordance with this section, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
3 period is not provided in accordance with this section. Plaintiff alleges Defendants failed to
4 provide legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or
5 not relieving employees from all work duties during meal periods thereby preventing employees
6 from taking legally compliant meal periods.

7 44. At all times relevant hereto, Plaintiff and aggrieved employees have worked shifts
8 of more than five (5) hours in a workday.

9 45. Pursuant to Labor Code section 226.7, Plaintiff and aggrieved employees are
10 entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for
11 each missed meal break, in an amount to be proven at trial.

12 46. At varying times relevant hereto, Plaintiff and aggrieved employees have worked
13 shifts more than ten (10) hours in a workday.

14 47. Defendants' Labor Code violations have caused Plaintiff and the aggrieved
15 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
16 but will be ascertained according to proof at trial.

17 48. Plaintiff, individually and on behalf of the aggrieved employees and the state of
18 California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512
19 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

20 49. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
21 subdivision (g) and Code of Civil Procedure section 1021.5.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

24 **(Labor Code § 226.7)**

25 **(By Plaintiff against All Defendants)**

26 50. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
27 as if fully alleged.

28 51. Labor Code section 226.7 provides that employers authorize and permit all

1 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
2 major fraction thereof.

3 52. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
4 provide and employee rest periods in accordance with this section, the employer shall pay the
5 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
6 that the rest period is not provided. Plaintiff and aggrieved employees consistently worked over
7 four (4) hours per shift with no rest breaks, due to Defendants' uniform policies and practices.

8 53. Defendants failed to reasonably make available rest breaks to Plaintiff and
9 aggrieved employees throughout the Class Period.

10 54. Defendants' Labor Code violations have caused Plaintiff and the aggrieved
11 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
12 but will be ascertained according to proof at trial.

13 55. Plaintiff, individually and on behalf of the aggrieved employees and the state of
14 California request recovery of civil penalties for violations of Labor Code sections 226.7 during
15 the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

16 56. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
17 subdivision (g) and Code of Civil Procedure section 1021.5.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

20 **(Labor Code §§ 201, 202, 203)**

21 **(By Plaintiff against All Defendants)**

22 57. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
23 as if fully alleged herein.

24 58. Plaintiff is informed and believes, and thereon alleges, that as part of Defendants'
25 ongoing unfair business practices, Defendants failed to pay all employees all wages earned during
26 their employment at the time of their separation in violation of Labor Code sections 200 and 201.

27 59. Labor Code section 201 provides that an employer is required to pay an employee
28 whose employment is terminated by the employer all wages earned and unpaid immediately upon

1 termination.

2 60. Labor Code section 202 requires an employer pay to an employee who quits his or
3 her employment, all wages earned and unpaid no later than 72 hours thereafter.

4 61. Labor Code section 203 provides that an employer who fails to pay all wages
5 earned and due an employee who is discharged or who quits within the timeframe set forth in
6 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
7 the same rate of pay until paid, but not more than 30 days. In other words, the employer owes the
8 employee his or her daily rate of pay at their regular rate of pay for each day the full amount of
9 unpaid wages is not paid, for a penalty of up to 30 days' wages.

10 62. Plaintiff and aggrieved employees who terminated employment within four (4)
11 years of the filing of this complaint until the date of entry of judgment, without being paid the
12 proper payments are entitled to thirty (30) days of pay at their regular rate of pay as waiting time
13 penalties.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

16 **(Labor Code §§ 226, 1174)**

17 **(By Plaintiff against All Defendants)**

18 63. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
19 as if fully alleged herein.

20 64. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage
21 Orders provide that employers must keep records and provide employees with itemized wage
22 statements showing all hours worked and each applicable rate of pay in effect during the pay
23 period with the corresponding number of hours worked at each hourly rate.

24 65. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
25 location in California or at the plant or establishment at which the employee is employed, payroll
26 records showing the hours worked daily, and the wages paid to each employee. Labor Code
27 section 226, subdivision (a) requires an employer to provide employees—either as a detachable
28 part of the check, draft, or voucher paying the employee's wages, or separately when wages are

1 paid by personal check or cash—an accurate itemized wage statement in writing, including
2 specified information, including, but not limited to: (1) gross wages earned; (2) total hours worked
3 by the employee...(5) net wages earned... and (9) all applicable hourly rates of pay and
4 corresponding number of hours. Labor Code section 226, subdivision (e) provides that if an
5 employer knowingly and intentionally fails to provide a statement itemizing, inter alia, the gross
6 and net wages earned, the total hours worked by the employee and the applicable hourly overtime
7 rates, causing the employee injury, then the employee is entitled to recover the greater of all actual
8 damages or fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for
9 each subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and
10 believes that Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff
11 Class.

12 66. The IWC Wage Orders require that every employer shall keep accurate
13 information with respect to each employee, including time records showing when each employee
14 begins and ends each work period, the total daily hours worked by each employee, and the total
15 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes
16 that Defendant willfully and intentionally failed to make and/or keep records which accurately
17 reflect the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that
18 Defendant's records: (1) failed to include the proper rate of pay for overtime purposes.

19 67. An employee is deemed to suffer injury if the employer fails to provide an accurate
20 wage statement containing all of the required information set forth in Labor Code section 226,
21 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper
22 rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for
23 employees to determine whether they were paid all wages due without complicated calculations
24 and/or reconstruction of records required to be maintained by the employer.

25 68. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
26 location in California or at the plant or establishment at which the employees are employed,
27 payroll records showing the hours worked daily and the wages paid to each employee.

28 69. Labor Code section 1174.5 imposes a civil penalty of five hundred dollars

1 (\$500.00) for an employer's failure to maintain accurate and complete records. This civil penalty
2 is in addition to the civil penalty of one hundred dollars (\$100.00) per initial violation and two
3 hundred dollars (\$200.00) per subsequent violation per pay period, per aggrieved employee that
4 would be imposed pursuant to Labor Code section 2699 for a violation of section 1174,
5 subdivision (d).

6 70. The IWC Wage Orders require that every employer shall keep accurate
7 information with respect to each employee, including, but not limited to, time records showing
8 the total daily hours worked by each employee, the total hours worked in each payroll period, and
9 applicable rates of pay.

10 71. Plaintiff is informed and believes that Defendants willfully and intentionally failed
11 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
12 employees. Specifically, Plaintiff believes that Defendants' records fail to include, inter alia: (1)
13 actual hours worked; (2) total hours worked; and (3) number of hours worked at each hourly rate.

14 72. In addition, the omission of time worked make it difficult for employees to
15 determine whether they were paid all wages due without complicated calculations and/or
16 reconstruction of records required to be maintained by the employer.

17 73. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
19 failing to compensate Claimant and aggrieved employees by utilizing the weighted average for
20 purposes of paying overtime for hours over eight (8) in a day or forty (40) in a week.

21 74. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
22 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
23 will be ascertained according to proof at trial.

24 75. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
25 employees and the State of California for violations of Labor Code sections 226, 1174, and
26 pursuant to Labor Code sections 226.3 and 1174.5 during the PAGA period, in a sum as provided
27 by the Labor Code and/or other statutes.

28 76. Plaintiff, individually and on behalf of the aggrieved employees and the State of

1 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
2 (g) and Code of Civil Procedure section 1021.5.

3 **SIXTH CAUSE OF ACTION**

4 **INDEMNIFICATION FOR EXPENDITURES OR LOSSES IN DISCHARGE OF**
5 **DUTIES**

6 **(Labor Code § 2802)**

7 **(By Plaintiff against All Defendants)**

8 77. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
9 as if fully alleged herein.

10 78. Defendants failed to indemnify Plaintiff and Plaintiff Class for all necessary
11 expenditures or losses incurred by Plaintiff and Plaintiff Class in direct consequence of the
12 discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff and aggrieved
13 employees for expenditures they incurred on their behalf, including, but not limited to,
14 maintaining (e.g., separately washing and drying) their heavily soiled uniforms (bearing
15 Defendants' logo). Plaintiff's and aggrieved employees' work uniforms became heavily soiled as
16 a result of coming in contact with customers' body fluids. In violation of the Labor Code,
17 Defendant failed to reimburse Plaintiff and aggrieved employees for these business-related
18 expenditures.

19 79. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
20 have suffered, and will continue to suffer, damages in amounts which are presently unknown,
21 but will be ascertained according to proof at trial.

22 80. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
23 employees and the State of California for violations of Labor Code section 2802 during the
24 PAGA period, in a sum as provided by the Labor Code and/or other statutes.

25 81. Plaintiff, individually and on behalf of the aggrieved employees and the State of
26 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
27 (g) and Code of Civil Procedure section 1021.5.

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EXHIBIT A



Kevin Mahoney, Esq.
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August 30, 2023

VIA Online Submission

LABOR AND WORKFORCE DEVELOPMENT AGENCY

PAGAfiling@dir.ca.gov

VIA CERTIFIED MAIL # 7019 0700 0001 7488 3478

Return Receipt Requested

Top Golf USA Inc.
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231

VIA CERTIFIED MAIL # 7019 0700 0001 7488 3492

Return Receipt Requested

Top Golf Payroll Services, LLC
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231

Re: Melvin J. Tronchez Molina v. Independent Options, Inc., "Top Golf/Top Golf Payroll Services, LLC"

To: California Labor and Workforce Development Agency, Independent Options, Inc., "Top Golf/Top Golf Payroll Services, LLC"

From: Melvin J Tronchez ("Claimant"), on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies and practices as set forth below.

Factual Statement

Please be advised that this firm, Mahoney Law Group, APC, represents the interests of Employee and all other aggrieved employees who intend to file a complaint alleging various Labor Code violations. Employee is a former employee of Top Golf/Top Golf Payroll Services, LLC ("Employer").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and Employer of the alleged Labor Code violations Claimant contends that the Employer committed against Claimant and other aggrieved employees in California. Claimant provides this notice in accordance with the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2699.3. Claimant desires to file a civil action

to enforce the rights under PAGA and seek civil penalties on behalf of all aggrieved employees is the LWDA declines to investigate. Pursuant to Labor Code §2699(a) and by way of this letter, Claimant also intends to represent all other current and former aggrieved employees who performed work for the Employer in California and who have suffered at least one of the wage and hour violations described herein during their employment.

This notice shall be construed as extending without limitation to any past, present or continuing violations of the California Labor Code, applicable IWC Wage Orders, or regulations which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

Pursuant to PAGA, this letter sets forth the specific provisions of the Labor Code and IWC Wage Orders which Claimant alleges that the Employer has violated, including the facts and theories to support the alleged violations known to Claimant at the time of this correspondence. (*Brown v. Ralph's Grocery Co.* (2018) 28 Cal.App.5th 824, 836 [sufficient facts and theories include "any basis for the allegations" (citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546]).

Facts and Theories of Labor Code Violations

Claimant was employed by employer from March 2022 through August 31, 2022, in a non-exempt hourly position. Claimant and aggrieved employees were engaged in serving Employer's customers where in Employer provided food and beverage as well golfing. Claimant was paid eighteen dollars (\$18.00) per hour.

The Employer maintained universal policies and practices applicable to Claimant and other caregiver employees in the form of written employee handbooks. Claimant on behalf of himself and other aggrieved employees of the Employer seek civil penalties for violations that occurred during the (1) one year preceding the date of this notice letter as follows:

I. Failure to Pay Overtime Wages: Labor Code §§510, 1194.

Pursuant to Labor Code §§510, 1194 and the applicable IWC Wage Order, Sect. 3, employers are required to compensate Claimant and other aggrieved employees or all overtime hours worked which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double the regular rate of pay for all hours worked in excess of eight (8) hours on the seventh consecutive work day or after twelve (12) hours in any work day. The regular rate of pay for purposes of calculating overtime pay must include all remuneration, including but not limited to, hourly earnings, piece rate earnings, bonus wages, and commissions. When an employee earns two or more hourly rates of pay and works overtime in the same workweek, the regular rate is calculated using the weighted average of all rates of pay earned during the workweek.

When Claimant and aggrieved employees worked over eight (8) hours in a day, or forty (40) hours in a week, Defendant had a policy and/or practice of not paying overtime at the weighted

average. As a result, Claimant and aggrieved employees were not properly paid all overtime wages due by Employer.

II. Failure to Provide Compliant Meal Periods: Labor Code §§226.7, 512, 1198 and Applicable IWC Wage Order Sections:

Labor Code sections 226.7, 512 and Section 11 of the applicable IWC Wage Order states that no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Employers are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees. Additionally, if a non-exempt employee is not relieved of all duty during a meal period, the meal period shall be considered “on duty” and counted as time worked. A paid “on duty” meal period is permitted only when (1) the nature of the work prevents an employee from being relieved of all duty, and (2) the parties have a written agreement agreeing to the on-duty meal periods.

[FACTS: Claimant and aggrieved employees did not agree to work on-duty meal periods nor does the nature of their work prevent them from being relieved. Employer regularly failed to allow non-exempt employees, including Claimant, to take full thirty-minute meal periods uninterrupted. Meal periods were regularly less than 30-minutes due to interruptions to attend to patient needs, and were not permitted by Employer until after the 5th hour of the employees’ shifts. If Claimant and other employees did not interrupt their meal periods to attend to customers, they could face disciplined by Employer.

III. Failure to Make Reasonably Available Rest Periods: Labor Code §§226.7, 512 and Applicable IWC Wage Order Sections:

Labor Code section 226.7, 512, and Section 12 of the applicable IWC Wage Order provides that employers are required to provide a ten (10) minute rest period for every four hours worked or major fraction thereof. Further, authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. If the employer fails to provide an employee a rest period the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday that the rest period is not provided.

Employer’s policies and practices frequently caused Claimant and other aggrieved employees to miss their rest breaks by, among other things, failing to provide employees rest breaks, prioritizing customers over providing rest breaks to Claimant and aggrieved employees. In addition, Employer did not adequately notify aggrieved employees of their rights to take rest breaks, and systematically denied them the opportunity to take rest breaks. Further, Employer violated Labor Code section 226.7 and the applicable IWC Wage Order by failing to pay Claimant and aggrieved employees one (1) hour of pay at their regular rate of pay for each workday a legally compliant rest break was not provided.

IV. Failure to Timely Pay All Wages Due: Labor Code §204:

Pursuant to Labor Code §204, employers must pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code §204 provides that labor

performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 1st and the last day, inclusive, of any calendar month, shall be paid for between the 1st and the 10th day of the following month. Employers using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period within which the wages are earned.

[FACTS: Employer failed to pay all overtime wages, earned on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to use the weighted average when paying Claimant and aggrieved employees' overtime for hours worked over eight (8) hours in a day or forty (40) hours in a week.

Employer knew it was required to pay Claimant and other aggrieved employees these wages owed no later than the payday following the payroll period in which the wages were earned, yet it willfully failed to do so.

V. Failure to Pay All Wages Due Upon Separation of Employment: Labor Code §§201-203:

Pursuant to California Labor Code sections 201-203, employers are required to pay all earned and unpaid wages immediately upon termination by the employer and within 72 hours if the employee resigns. California Labor Code §203 provides that if an employer fails to pay all wages earned and due throughout the employees' employment within the timeframes proscribed by Sections 201 and 202, the employer is liable for waiting time penalties in the form of continued daily compensation at the employee's last rate of pay until all earned wages are paid up to 30 work days.

Because Claimant and aggrieved employees were not properly compensated for their overtime pay for hours worked over eight (8) in day and forty (40) in a week, Employer has failed and continues to fail to pay all wages due to aggrieved employees as required by Labor Code §§201-202.

VI. Failure to Provide Accurate Itemized Wage Statements: Labor Code §226:

Labor Code section 226(a) requires every employer to provide an accurate, itemized wage statement in writing with respect to each of its employees showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and applicable piece rate paid to employee, (4) all deductions, (5) net wages earned, (6) dates of the period for which employee is paid, (7) name of the employee and only the last four digits of the social security number or an employee identification number other than social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates of pay in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in

a subsequent pay period, not exceeding an aggregate per employee of \$4,000. The employee is also entitled to an award of costs and reasonable attorney's fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Claimant alleges Employer has consistently violations 226(a), subd. (1), (2), (5), and (9). Employer violated these provisions by failing to compensate Claimant and aggrieved employees by utilizing the weighted average for purposes of paying overtime for hours over eight (8) in a day or forty (40) in a week.

VII. Failure to Maintain Accurate Records: Labor Code §§1174, 1174.5, 1198 and Applicable IWC Wage Order:

Labor Code section 1174 states, "[e]very person employing labor in this state shall...[k]eep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments." The "Records" section of the applicable Wage Order requires every employer to keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, the total wages paid in each payroll period.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100-\$200 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Section 1174(d).

Claimant alleges Employer has consistently violations 226(a), subd. (1), (2), (5), and (9). Employer violated these provisions by failing to compensate Claimant and aggrieved employees by utilizing the weighted average for purposes of paying overtime for hours over eight (8) in a day or forty (40) in a week.

VIII. Failure to Reimburse Employees for Necessary Business Expenditures: Labor Code §2802, Applicable IWC Wage Order:

Labor Code section 2802(a) provides in pertinent part, "[a]n 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." Labor Code section 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

Employer required Claimant and aggrieved employees to wash their employer mandated uniforms, which was required due to the heavy soiling while performing their work duties. Employer failed to reimburse Claimant and aggrieved employees accordingly, thereby shifting the

cost of doing business to the Claimant and aggrieved employees.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed or losses incurred by Claimant or by any other aggrieved employee of the Employer, Claimant expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If Employer wants clarification of any of the alleged violations or facts and theories upon which they are based at this time, Employer is invited to contact Claimant's counsel. Otherwise, Claimant will presume Employer fully understands the allegations contained herein.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

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Sincerely,



Kevin Mahoney, Esq.
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